



OFFICE OF FIELD POLICY
AND MANAGEMENT

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

Special Attention of:
HUD Office of Davis-Bacon and Labor
Standards Staff
HUD Program Participants

Transmittal for Handbook No.:
1344.1 REV-3

Issued: January 2023
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- I. This Transmits:** HUD Handbook 1344.1 Rev-3 entitled Federal Labor Standards Requirements in Housing and Urban Development Programs
- II. Explanation of Material Transmitted:** This Handbook prescribes the policies, procedures, and responsibilities of HUD Office of Davis-Bacon Labor Standards (DBLS) staff and program participants in the administration and enforcement of labor standards provisions related to HUD programs. This issuance contains twelve chapters and associated appendices dealing primarily with labor standards matters relating to Davis-Bacon and Related Acts. The issuance also addresses the procedures and responsibilities of DBLS staff, public housing agencies and tribally designated housing entities in the administration and enforcement of labor standards provisions relating to prevailing wage rates determined by HUD pursuant to the U.S. Housing Act of 1937 and Native American Housing Assistance and Self-Determination Act of 1996 (each as amended).
- III. Cancellations:** HUD Handbook 1344.1, Rev-2 issued February 2012.
- IV. Summary of Significant Changes:**
- A. Clarifies DBLS staff responsibilities and the responsibilities of HUD program participants.
 - B. Updates and enhances DBLS policies and procedures concerning day-to-day program administration and enforcement.
 - C. Streamlines DBLS administration and compliance review requirements.
- VI. Significant Changes:**
- A. **Applied throughout:** Updated the name Office of Labor Relations to Office of Davis-Bacon and Labor Standards, Regional Labor Standards Officer to Deputy Director, and Labor Relations Specialist to Labor Standards Specialist; updated website links; where feasible, changed passive voice to plain language.
 - B. **Chapter 1** Office of Davis-Bacon and Labor Standards: Revised title for clarity and rewritten following plain language guidelines; Updated organizational structure to reflect current structure; Added an introduction that includes a list of most frequently used acronyms and referenced the comprehensive list in Appendix IV-1.
 - C. **Chapter 2** Prevailing Wage Requirements: Added RAD information in paragraph 2-5; Added CDBG info under paragraph 2-11 E.

- D. **Chapter 3** Davis-Bacon Wage Decisions: Aligned character of construction with DOL definitions; Added assisted living facilities; Updated Contract Labor Standards Provisions; Updated substantial threshold to \$2.5 million to align with AAM 236 and HUD wage decision process to align with LR-21-01.
- E. **Chapter 4** Payroll Reporting: Revised title for clarity and reformatted or rewritten following plain language guidelines, including moving the definition near to the end.
- F. **Chapter 5** Labor standards Administration and Basic Enforcement: Reformatted chapter following plain language guidelines; Added new paragraphs 5-4 and 5-10(J).
- G. **Chapter 7** Disputes, Appeals, & Sanctions: Formatted information into lists where appropriate; Added a section to make LCA responsibilities clear; Added the process for contesting monitoring review findings; Added a statement that HQ's determination on appeals of maintenance wage rates or monitor findings is the final determinator, no other appeal steps are available.
- H. **Chapter 8** Maintenance Wage Rate Decisions: Formatted into three sections for ease of understanding; same for the name change; Added Department of Hawaiian Home Lands (DHHL); The term PHA used to collectively represent PHA/TDHE/DHHL; term and description added to introduction; Starting at paragraph 8-6, added additional information to record practices that have developed over time.
- I. **Chapter 9** Deposits Escrow Accounts: Rewrote introduction and added section II for HQLS and Section III for the LCA role; Referenced new Appendix III-5 Refund of Deposit Memorandum Template in Paragraph 9-13 Preparing Vouchers; Added a section to explain the role of LCAs in deposit process; Added a section covering the HQ role.
- J. **Chapter 10** Reports: Added additional information reports as requested by DOL; Described types of reports in more detail.
- K. **Chapter 11** Interpretations Applications: Omitted Paragraph 11-4 Conservation Corps; Omitted Paragraphs 11-9 Disaster Assistance and 11-10 CDBG Transitional Housing; added programs to Appendix II-5.
- L. **Chapter 12** Monitoring LCAs: Refined instructions to better match practice; Updated monitoring guides and risk assessment process for consistency across DBLS.
- M. **Appendices:** Omitted Appendix II-4, DOL Regulations, 29 CFR Parts 1, 3, 5, 6 & 7; Renumbered Appendix II-5 to II-4 and II-6 to II-5; Omitted Appendix III-3, Sample Payee Locator Letter; Renumbered Appendix III-4 to III-3, renamed it to Sample Wage Restitution Payment Notice, and replaced content to match.

VII. Filing Instructions:

Remove:

Handbook 1344.1 REV-2 dated 2/12
 Handbook 1344.1 CHG-1 dated 3/13
 Handbook 1344.1 CHG-2 dated 9/13

Insert:

Handbook 1344.1 REV-3 dated 11/22



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

OFFICE OF DAVIS-BACON
AND LABOR STANDARDS

Special Attention of:

HUD Office of Davis-Bacon
and Labor Standards Staff
HUD Program Participants

Handbook 1344.1 REV-3

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Cross References: Davis-Bacon Act; Davis-Bacon Related Acts; All HUD Labor Relations Letters; DOL Regulations 29 CFR Parts 1, 3, 5, 6, and 7; DOL All Agency Memoranda 71, 96, 130, 131, 213, and 236;

**Federal Labor Standards
Requirements in Housing and
Urban Development Programs**

PREFACE

The U.S. Department of Housing and Urban Development offers this handbook for use by its Office of Davis-Bacon and Labor Standards (DBLS) staff and by program participants such as Community Development Block Grant recipients, public and Indian housing agencies, and other entities operating HUD programs to which labor standards responsibilities have been delegated.

This handbook describes policies and procedures and assigns responsibilities for the administration and enforcement of prevailing wage and reporting requirements in HUD programs. Because the statutory and regulatory labor standards vary among HUD programs, differences in procedures are noted, as applicable.

Unless otherwise noted, all of the forms and publications referenced in this handbook are available on-line at HUDClips at <https://www.hud.gov/guidance> and/or the HUD Office of Davis-Bacon and Labor Standards website at https://www.hud.gov/program_offices/davis_bacon_and_labor_standards.

We hope HUD program participants find this handbook helpful. Contact the HUD DBLS staff in your area if you have questions or need further assistance. A list of the staff, their contact information, and the jurisdictions they serve are available at the Office of Davis-Bacon and Labor Standards website at https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/laborrelstf.

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List of Labor Standards Forms

Most HUD forms are available on HUDCLIPS at:

https://www.hud.gov/program_offices/administration/hudclips

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11	Record of Employee Interview and Instructions
11-SP	Record of Employee Interview and Instructions (Spanish)
4010	Federal Labor Standards Provisions; also available in Spanish
4710	Semi-Annual Labor Standards Enforcement Report (Local Contracting Agencies) and Instructions
4720	Project Wage Rate Sheet
4730	Federal Labor Standards Questionnaire
4730-SP	Federal Labor Standards Questionnaire (Spanish)
4731	Complaint Intake Form
4732	Labor Standards Deposit Agreement
4733	Wire Transfer Instructions for Labor Standards Deposit Accounts
4734	Labor Standard Deposit Account Voucher
4741	Federal Labor Standards Agency On-Site Monitoring Review Guide
4742	Federal Labor Standards Agency Remote Monitoring Review Guide
4743	Federal Labor Standards State CDBG and HOME Monitoring Review Guide
4750	Maintenance Wage Rate Recommendation
4751	Maintenance Wage Rate Survey
4752	Maintenance Wage Rate Survey - Summary Sheet
52158	Maintenance Wage Rate Determination
52531B	Agreement to Enter into A Housing Assistance Payments Contract, New or Rehabilitation, Part II
52538B	Section 8 Moderate Rehabilitation Program, Part II, Agreement to Enter into a Housing Assistance Payments Contract
5370	General Conditions of the Contract for Construction
5370-C	General Conditions for Non-Construction Contracts - Section I , Section II
5370-EZ	General Contract Conditions for Small Construction/Development Contracts
5679	Addendum to the HAP Contract-Labor Standards
92554M	Supplementary Conditions of the Contract for Construction
DOL Form Number	Name
WH-347	Payroll
WH-1321	Davis-Bacon Poster
WH-1321SP	Davis-Bacon Poster (Spanish)
Other Form Number	Name
SF-1444	Request for Authorization of Additional Classification and Rate
General Services Administration (No Form Number)	Vendor Supplier Form (Available from a DBLS staff member.)
U.S. Treasury (No Form Number)	Supplier Entry Request Form

List of Appendices and Forms by Chapter

CHAPTER	REFERENCED APPENDICES	CITED FORMS
1	<ul style="list-style-type: none"> • I-1 Reorganization Plan No. 14 of 1950 • I-2 Delegations of Authority • I-3 Labor Standards Core Work Activities • IV-1 Acronyms and Symbols 	None
2	<ul style="list-style-type: none"> • II-1 HUD Davis-Bacon Related Acts • II-2 Davis-Bacon Act/Copeland “Anti-kickback” Act • II-3 Contract Work Hours and Safety Standards Act • II-4 Federal Labor Standards Coverage in Major HUD Programs • II-5 Factors of Labor Standards Applicability 	None
3	None	<ul style="list-style-type: none"> • HUD-92554M Supplementary Conditions of the Contract for Construction • HUD-4010 Federal Labor Standards Provisions • HUD-5370 General Conditions of the Contract for Construction • HUD-5370-EZ General Conditions for Small Construction/ Development Contracts • HUD-52531B Agreement to Enter into A Housing Assistance Payments Contract, New Construction or Rehabilitation, Part II • HUD-5679 Addendum to the HAP Contract - Labor Standards • SF-1444 Request for Authorization of Additional Classifications and Rates
4	None	<ul style="list-style-type: none"> • WH-347 Payroll • HUD-11 Record of Employee Interview
5	<ul style="list-style-type: none"> • III-I Willful Violations/Falsification Applicability 	<ul style="list-style-type: none"> • HUD-11 Record of Employee Interview • HUD-4010 Federal Labor Standards Provisions

CHAPTER	REFERENCED APPENDICES	CITED FORMS
5, cont.		<ul style="list-style-type: none"> • HUD-4730 Federal Labor Standards Questionnaire • HUD-4732 Deposit Agreement • HUD-4733 Wire Transfer Instructions for Labor Standards Deposit Accounts • HUD-52531B Agreement to Enter into A Housing Assistance Payments Contract, New Construction or Rehabilitation, Part II • HUD-5370 General Conditions of the Contract for Construction • HUD-5370-EZ General Conditions for Small Construction/ Development Contracts • HUD-5679 Addendum to the HAP Contract - Labor Standards • HUD-92013 • HUD-92554M Supplementary Conditions of the Contract for Construction • WH-347 Payroll
6	None	None
7	None	None
8	<ul style="list-style-type: none"> • II-4 Federal Labor Standards Coverage in Major HUD Programs 	<ul style="list-style-type: none"> • HUD-11 Record of employee Interview • HUD-4730 Federal Labor Standards Questionnaire in English • HUD-4730 SP: Federal Labor Standards Questionnaire in Spanish • HUD-4750 Maintenance Wage Rate Recommendation • HUD-4751 Maintenance Wage Rate Survey • HUD-4752 Maintenance Wage Rate Survey - Summary Sheet • HUD-52158 Maintenance Wage Rate Determination • HUD-5370-C General Conditions for Non-construction Contracts – Sections 1 and 2

CHAPTER	REFERENCED APPENDICES	CITED FORMS
9	<ul style="list-style-type: none"> • III-2 Sample Deposit Schedule • III-3 Sample Wage Restitution Payment Notice • III-4 Sample Unfound Worker Schedule • III-5 Refund of Payment Memorandum Template 	<ul style="list-style-type: none"> • U.S. Treasury Supplier Entry Request Form • HUD-4732 Labor Standards Deposit Agreement • HUD-4733 Wire Transfer Instructions for Labor Standards Deposit Accounts • HUD-4734 Labor Standards Deposit Account Voucher
10	None	• HUD-4710
11	• II-4 Federal Labor Standards Coverage in Major HUD Programs	None
12	• II-4 Federal Labor Standards Coverage in Major HUD Programs	<ul style="list-style-type: none"> • HUD-4741 Federal Labor Standards Agency On-site Monitoring Review Guide • HUD-4742 Federal Labor Standards Agency Remote Monitoring Review Guide • HUD-4743 Federal Labor Standards Review Guide: State-CDBG and HOME

Chapter 1 OFFICE OF DAVIS-BACON AND LABOR STANDARDS

- 1-1 **Introduction.** This chapter introduces the Office of Davis-Bacon and Labor Standards (DBLS), the office within HUD that is responsible for compliance with the federal prevailing wage requirements applicable to HUD-assisted and insured housing and community development programs covered under the Davis-Bacon and Related Acts. This chapter also covers the roles and responsibilities of DBLS staff and the responsibilities of the state, local, and tribal agencies with which it works.

Many acronyms are used throughout this handbook, which are spelled out the first time they are introduced in each chapter. For a comprehensive list of acronyms, see Appendix IV-1, Acronyms and Symbols. For ease of reference, these are the most frequently used acronyms throughout the handbook, listed alphabetically:

- DBA: Davis-Bacon Act
- DBRA: Davis-Bacon and Related Acts
- CPR: Certified Payroll Report
- CWHSSA: Contract Work Hours and Safety Standards Act
- DBLS: HUD Office of Davis-Bacon and Labor Standards
- DOL: U.S. Department of Labor
- HQLS: HUD Headquarters Office of Davis-Bacon and Labor Standards
- LCA: (State or) Local Contracting Agency
- LSIS: Labor Standards Information System
- LSS: HUD Labor Standards Specialist or Staff
- MWD: Maintenance Wage Rate Decision

- 1-2 **The Office of Davis-Bacon and Labor Standards.** The Office of Davis-Bacon and Labor Standards (DBLS), formerly known as the Office of Labor Relations, is responsible for administering and enforcing federal labor standards provisions in HUD programs. These standards include those contained within the Davis-Bacon and Related Acts (DBRA), the Copeland Act, and the Contract Work Hours and Safety Standards Act (CWHSSA). DBLS is also responsible for administering and enforcing the prevailing maintenance wage requirements of the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), both as amended.

- 1-3 **Reorganization Plan No. 14 of 1950.** President Harry Truman transmitted to Congress his Reorganization Plan No. 14 dated March 13, 1950. The Plan authorized and directed the Secretary of Labor (SOL) to coordinate with other federal agencies on federally financed or assisted projects by prescribing standards, regulations, and procedures related to wages and hours, and make such investigations as the SOL deems desirable to assure consistent enforcement. The authorities granted to the SOL in the Plan include the DBRA, the Copeland Act, and the CWHSSA.

The Plan reiterated that the actual performance of enforcement activities, including the investigation of complaints of violations, remains the duty of the respective agencies awarding the contracts or providing the federal assistance. DBLS carries out HUD's responsibilities under Reorganization Plan No. 14. (See Appendix I-1, Reorganization Plan No. 14 of 1950.)

- 1-4 **Organization.** DBLS is part of the Office of Field Policy and Management (FPM). DBLS consists of a Headquarters staff, headed by the National Director of DBLS, and field staff organized into three Hubs nationwide. Each Hub is managed by a Hub Director, who is supported by one or more Deputy Directors. Deputy Directors supervise Labor Standards Specialists (LSS) and may supervise staff in more than one region.

1-5 **Roles and Responsibilities.**

- A. **Headquarters DBLS (HQLS).** The National Director of DBLS serves as the principal advisor to the Secretary of HUD and throughout HUD on matters concerning labor standards administration and enforcement in HUD programs and associated interests. HQLS is responsible for developing policy and providing guidance, supervision, oversight, and technical support to DBLS staff nationwide.
- B. **Field Staff of DBLS.** Both Hub Directors and Deputy Directors are responsible for the proper administration and enforcement of federal labor standards within their respective jurisdictions. Hub Directors advise the National Director of DBLS concerning labor standards and operational matters and associated interests. Deputy Directors supervise field staff located within their region(s) and provide technical support and advice.

An LSS is responsible for the proper administration and enforcement of federal labor standards within their jurisdiction. The LSS serves as the principal advisor to the Deputy Director concerning labor standards and associated matters within their assigned jurisdiction.

- 1-6 **Delegations of Authority.** The Department published delegations of authority in the Federal Register on October 5, 2020. The Secretary delegated to the Assistant Deputy Secretary for Field Policy and Management and to the Director for Field Policy and Management all authority with respect to Davis-Bacon and Labor Standards administration and enforcement vested in, or delegated or assigned to, the Secretary under statutes and other authorities relating to Davis-Bacon and Labor Standards, including, but not limited to:

- The Davis-Bacon Act (40 U.S.C. 3141, *et seq.*),
- The Copeland Act (40 U.S.C. 3145),
- The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701, *et seq.*),
- Reorganization Plan No. 14 of 1950 (5 U.S.C. App. Reorg. Plan 14),
- The National Housing Act (12 U.S.C. 1701, *et seq.*),
- Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q),

- The Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704, *et seq.*),
- The United States Housing Act of 1937 (42 U.S.C. 1437),
- The Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*),
- The Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101, *et seq.*),
- Executive Order 13502 (74 FR 6985), and
- Certain Department of Labor regulations (29 CFR parts 1, 3, 5, 6, and 7).

The authority delegated includes the authority to determine or adopt prevailing wage rates, which is vested in the Secretary by certain statutes, including, but not limited to, the United States Housing Act of 1937 (42 U.S.C. 1437j) and the Native American Housing Assistance and Self Determination Act (25 U.S.C. 4101, *et seq.*).

A. Allocation of program authority within the Office of Davis-Bacon and Labor Standards.

1. **The National Director of Davis-Bacon and Labor Standards** retains program authorities and actions relating to:
 - a. Referrals/requests to DOL on reconsiderations of Davis-Bacon wage decisions, rulings, and additional classifications;
 - b. Referrals/requests to DOL on DBRA/CWHSSA investigations on HUD program activity;
 - c. Referrals to DOL for hearings/appeals on investigative or other findings of violation, and recommendations for administrative sanctions;
 - d. Decisions relating to variations, tolerances, waivers and/or exemptions from the requirements of this handbook and any other directive or policy issued by DBLS (the National Director of DBLS may not approve variations, tolerances, waivers and/or exemptions relating to statutory or regulatory requirements); and
 - e. Final decisions relating to the administration and enforcement of prevailing wage rates determined or adopted by HUD.
2. **Hub Directors and Deputy Directors** are authorized and empowered to take the actions listed below within their assigned jurisdiction, and on certain cases or instances as assigned to them by the National Director of DBLS. Actions and decisions made by the Deputy Director may be subject to further review by, or appeal to, the National Director of DBLS.
 - a. Review/make determinations of federal labor standards applicability for HUD program activities;
 - b. Refer to HQLS unique and/or complex prevailing wage applicability determinations and other labor standards issues;
 - c. Approve the initiation of federal labor standards investigations on HUD-assisted projects/contracts;
 - d. Render decisions on requests for reconsideration pertaining to findings of underpayment;

- e. Recommend, through HQLS, the imposition of administrative sanctions including debarment and limited denials of participation;
 - f. Approve reductions or waivers of CWHSSA liquidated damages totaling \$500 or less; recommend, through HQLS, reductions/waivers of CHWSSA liquidated damages totaling in excess of \$500;
 - g. Approve the imposition of deposit requirements on HUD multifamily development projects;
 - h. Approve disbursements from deposit accounts;
 - i. Recommend, through HQLS to DOL, any appeals, variances, tolerances and exemptions in the application of DOL regulations, directives, guidance and/or Davis-Bacon wage decisions;
 - j. Refer, through HQLS to DOL, disputes, investigative findings, and other matters relating to Davis-Bacon prevailing wage rates for further review and disposition;
 - k. Render decisions on requests for reconsideration pertaining to prevailing wage rates determined or adopted by HUD;
 - l. Render decisions on disputes arising from the administration and/or enforcement of prevailing wage rates determined or adopted by HUD; and
 - m. Undertake and/or oversee any program actions or authorities delegated to Field Labor Relations Specialists/Staff.
3. **Labor Standards Specialists** are authorized and empowered to take the actions listed below within their assigned jurisdiction and on certain cases or instances as assigned to them by the Deputy Director. Actions taken and decisions made by the LSS may be subject to further review by, or appeal to, the Deputy Director.
- a. Review/make determinations of federal labor standards applicability for HUD program activities;
 - b. Refer to the Deputy Director unique and/or complex prevailing wage applicability determinations and other labor standards issues;
 - c. Issue determinations of back wages due and other findings of underpayment or labor standards violation;
 - d. Issue notices of intent to assess CWHSSA liquidated damages; approve reductions or waivers of CHWSSA liquidated damages totaling \$100 or less; recommend, through the Deputy Director, reductions/waivers of CWHSSA liquidated damages totaling in excess of \$100;
 - e. Conduct investigations of labor standards compliance as approved by the Deputy Director;
 - f. Issue prevailing wage rates for maintenance laborers and mechanics;
 - g. Approve training programs, including wage rates for trainees; associated with maintenance work subject to prevailing wage rates determined or adopted by HUD;
 - h. Approve the payment of expenses, reasonable benefits, and/or nominal fees to bona fide volunteers;

- i. Conduct training and provide technical assistance to state and/or local contracting agencies (LCA) administering HUD programs;
- j. Conduct monitoring reviews to assess state, local and/or tribal agency labor standards performance; and
- k. Issue reports relating to state and/or local agency monitoring.

B. **Responsibilities of state, local, and tribal agencies.** This handbook delineates certain labor standards responsibilities of state, local, and tribal agencies (collectively referred to as Local Contracting Agencies or LCAs) that administer HUD programs subject to prevailing wage requirements.

Accordingly, LCAs are authorized, empowered, and responsible for undertaking the following responsibilities. LCA actions and decisions may be subject to further review by, or appeal to, HUD DBLS staff.

1. **Designate appropriate staff** prior to any work subject to prevailing wage requirements, to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. Provide the name(s) of the staff to the appropriate HUD DBLS staff.
2. **Establish a construction contract management system** which meets the standards of HUD regulations at 24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments.
3. **Inform, support, and oversee subordinate program participants,** (e.g. sub-recipients and grantees) concerning labor standards requirements and responsibilities. Ensure full labor standards compliance regarding any activities undertaken by subordinate program participants.
4. **Ensure that all bid documents, contracts, and subcontracts** for work subject to federal prevailing wage requirements contain the appropriate labor standards provisions and the applicable federal wage rate decision.
5. **Ensure that a contract is not awarded to a contractor that is ineligible** to participate in federally assisted programs (e.g. debarred).
6. **Conduct on-site inspections including interviews with laborers and mechanics** employed on the prevailing wage-covered work. Ensure that the applicable federal wage decision is posted at the job site and, for work subject to Davis-Bacon requirements, ensure that the Davis-Bacon poster WH-1321 is posted with the applicable wage decision.
7. **Review certified payroll reports and related documentation.** Identify discrepancies and violations. Ensure that any needed corrections are

promptly made.

8. **Maintain full documentation** of federal labor standards administration and enforcement activities, such documentation to be made freely available for HUD review. Documentation associated with work subject to Davis-Bacon requirements must also be made freely available to the U.S. Department of Labor (DOL).
9. **Refer any potential criminal or complex enforcement matters to HUD,** in addition to debarment recommendations and liquidated damage assessments for CWHSSA overtime violations.
10. **Comply with all HUD requirements** including special statutory, program, and other requirements.
11. **Prepare and submit to HUD federal labor standards enforcement reports** as required in DOL regulations at 29 CFR § 5.7.
12. **State agencies additionally:**
 - a. May communicate directly with DOL concerning administering and enforcing federal labor standards provisions, or may communicate through HUD, at the State's discretion.
 - b. Must monitor and assess its grantees' labor standards performance.
 - c. Must ensure corrective actions are taken for any deficiencies noted in grantee performance reviews.
 - d. Must collect and submit to DOL or HUD all enforcement reports required in DOL regulations at 29 CFR § 5.7. (See Chapter 10, *Reports – Davis-Bacon and Related Acts*.)

1-7 **Primary labor standards objectives and core work activities.** HUD identified five primary labor standards objectives for LCAs and its staff. In addition, HUD defined the core work activities for its field operations.

A. **The labor standards objectives for both LCAs and DBLS staff are to:**

1. **Apply prevailing wage requirements properly.** Make certain that prevailing wage and reporting standards are applied where required. Ensure that any exemptions, exceptions, or limitations are identified.
2. **Support labor standards compliance.** Provide training, technical support, and oversight to program participants, including contractors and subcontractors, to ensure that program participants understand their obligations under federal labor standards.
3. **Monitor contractor performance.** Review certified payroll submissions and other information to ensure that employers comply with labor

standards requirements including paying prevailing wages to laborers and mechanics.

4. **Investigate probable violations and complaints.** Thoroughly explore any evidence of violations, especially allegations of underpayment. Ensure full resolution of substantiated violations.
 5. **Pursue debarment and other available sanctions against repeat labor standards violators.** Implement a no-tolerance policy toward employers and any other program participants who repeatedly violate prevailing wage requirements and/or fail to properly carry-out their labor standards responsibilities.
- B. **HUD Davis-Bacon and Labor Standards core work activities.** The definitions of DBLS staff's key program responsibilities and tasks are contained in Appendix I-3, Labor Relations Core Work Activities. The definitions include the item or activity name, the expected product or outcome, the timing for performance credit, and the source document and associated recordkeeping.

LCAs are not required to follow DBLS core work activities but may find these definitions helpful in the implementation of their own labor standards administration and enforcement program.

Related Appendices

I-1 Reorganization Plan No. 14 of 1950
I-2 Delegations of Authority
I-3 Labor Standards Core Work Activities
IV-1 Acronyms and Symbols

Chapter 2 PREVAILING WAGE REQUIREMENTS IN HUD PROGRAMS

- 2-1 **Introduction.** This chapter discusses the federal laws and regulations that the Office of Davis-Bacon and Labor Standards (DBLS) is responsible for administering and enforcing. This includes certain Davis-Bacon prevailing wage activity and HUD-determined prevailing wage standards. In addition, other federal laws contain labor requirements associated with prevailing wages, such as overtime and weekly payroll certification and submission. Paragraphs 2-2 and 2-3 cover these laws.

The Davis-Bacon Act wage requirements apply to HUD programs by statutory provisions in the Davis-Bacon Act itself and in HUD Related Acts. HUD-determined wage rates are made applicable to Public, Indian, and Hawaiian housing activities by the U.S. Housing Act of 1937, as amended, and the Native American Housing Assistance and Self-determination Act of 1996, as amended. Service Contract Act wage requirements are made applicable by statutory provisions within the Service Contract Act itself (for direct HUD contracts *only*).

There are three types of prevailing wage requirements that apply to HUD programs:

1. **Davis-Bacon Act prevailing wages** payable to laborers and mechanics employed on covered construction work.
2. **HUD-determined prevailing wages** payable to:
 - i. laborers and mechanics relating to maintenance work, including non-routine maintenance work, in Public, Indian, and Hawaiian housing operations; and
 - ii. architects, technical engineers, draftsmen, and technicians employed in Public, Indian, and Hawaiian housing development.
3. **Service Contract Act prevailing wages** relating to contracts for maintenance and other services for direct HUD contracts only.

Note: Davis-Bacon Act and Service Contract Act activities for direct HUD contracts are managed by the HUD Office of the Chief Procurement Officer.

2-2 **Basic labor and labor-related statutory provisions.**

- A. **Davis-Bacon Act (DBA).** The DBA, enacted in 1931, applies to contracts in excess of \$2,000 for construction, alteration, and/or repair of public buildings or public works, including painting and decorating, to which the United States or the District of Columbia is a party. The DBA requires that the advertised specifications for such contracts contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics be based upon the wages found to be prevailing by the Secretary of Labor. The DBA includes provisions that:
1. Require the contractor or subcontractor to pay all mechanics and laborers at least once a week;
 2. Prohibit contractors or subcontractors from taking deductions or rebates from wages earned by laborers and mechanics;
 3. Require the contractor or subcontractor to pay Davis-Bacon wages to all laborers and mechanics employed on the site of the work regardless

- of their skill level, and regardless of any contractual relationship alleged to exist between the laborers and mechanics and the contractor or subcontractor;
4. Require the contractor or subcontractor post the scale of wages to be paid (i.e., the applicable Davis-Bacon wage decision) in a prominent and accessible place at the work site;
 5. Define prevailing wages to include fringe benefits;
 6. Permit withholding from payments due to the contractor on account of wage restitution which may be found due to the laborers and mechanics;
 7. Permit the payment of wage restitution from amounts withheld from contract payments;
 8. Permit the termination of the contract where it is found that any laborer or mechanic is underpaid;
 9. Permit the debarment of persons or firms found to have disregarded their obligations to employees and subcontractors.

The Davis-Bacon Act applies where the Federal Government or the District of Columbia is a party to a contract for construction and the value of the contract exceeds \$2,000. This type of applicability is referred to as *direct Davis-Bacon Act or DBA coverage*. An example of DBA coverage is when HUD contracts directly for repairs to HUD-owned properties. HUD's Office of the Chief Procurement Officer manages these types of contracts. A copy of the DBA is provided in Appendix II-2.

Most HUD construction work is *not* covered by the DBA since HUD does not usually contract directly for construction work. Rather, Davis-Bacon wage rates apply to HUD programs because of prevailing wage requirements expressed in HUD "Related Acts" such as the U. S. Housing Act of 1937 and the Housing and Community Development Act of 1974, as amended. The Related Acts (referred to throughout this handbook as the Davis-Bacon and Related Acts or DBRA) are discussed further in paragraph 2-3.

B. Contract Work Hours and Safety Standards Act (CWHSSA). The CWHSSA applies to both direct federal contracts and to federally assisted contracts where those contracts require or involve the employment of laborers and mechanics and where federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of Public Housing Authorities (PHA), Tribally Designated Housing Entities (TDHE), and Indian Housing Agencies (IHA) developments. A copy of the CWHSSA is provided in Appendix II-3.

Note: CWHSSA overtime provisions do not apply to laborers and mechanics employed directly by Public or Indian housing agencies. However, overtime provisions generally apply to these workers under the Fair Labor Standards Act

(FLSA). HUD does not have authority to enforce FLSA violations. Refer complaints of FLSA violations to the U.S. Department of Labor (DOL), Wage and Hour Division.

CWHSSA provides that all overtime (O/T) hours (defined as hours worked in excess of 40 during any workweek on the CWHSSA-covered project site) must be compensated at a rate not less than one- and one-half times the regular basic rate of pay. Where CWHSSA O/T provisions are applicable, compensatory time in lieu of premium pay for O/T hours is not permissible. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States Government for liquidated damages computed per person per day at a rate which DOL publishes annually. It is a federal criminal misdemeanor to intentionally violate CWHSSA standards. DOL posts current fines at: <https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>.

Exemptions:

1. CWHSSA overtime provisions do not apply where the federal assistance is only in the nature of a loan guarantee or insurance.
2. CWHSSA overtime provisions do not apply to prime contracts of \$100,000 or less.

C. **Copeland Act (Anti-Kickback Act)**. The Copeland Act concerns three facets of prevailing wage compliance, listed below. A copy of the Copeland Act is provided in Appendix II-2.

1. The “anti-kickback” provision prohibits contractors and subcontractors from inducing an employee working on a covered contract to give up any part of the compensation to which he or she is entitled. Violations are a criminal offense and are punishable by a \$5,000 fine or imprisonment up to five years, or both.
2. Associated DOL regulations restrict payroll deductions to those that are permissible without DOL approval as explained at 29 CFR § 3.5; deductions that require advance DOL approval are explained at 29 CFR § 3.6.
3. The Act requires the submission of weekly certified payroll reports (CPR) accompanied by a Statement of Compliance by all contractors and subcontractors engaged in such construction, prosecution, completion, or repair. The willful falsification of a certified payroll report or statement of compliance may subject the employer to civil or criminal prosecution under § 1001 of Title 18 and § 3729 of Title 31 of the United States Code and may also be a cause for debarment.

Exemptions:

- a. Copeland Act CPR requirements are applicable *only* where Davis-Bacon (DBA or DBRA) prevailing wage provisions are applicable.
- b. Copeland Act anti-kickback provisions do not apply where the only federal assistance is a loan guarantee.

- D. **Fair Labor Standards Act (FLSA).** The FLSA governs matters such as federal minimum wage rates and overtime (O/T). These standards are generally applicable to any labor performed and may be *pre-empted* by other (often more stringent) federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.
- E. **Portal-to-Portal Act (PA).** The PA applies to the DBA and prevents the commencement of any court suit for unpaid straight-time (S/T) wages more than two years after performance of the work (three years in the case of willful violations), where permissible under the law. *However*, DOL's position is that the PA does not apply to *administrative* actions initiated through Administrative Law Judge (ALJ) hearing procedures; thus, the PA does not preclude corrective administrative action after two (or three) years.

The PA *does not* apply to federally assisted (DBRA) projects. Instead, the various State statutes of limitations apply to such projects in private actions where they are judicially determined to be permissible under the law. The federal six-year statute of limitations applies in government enforcement actions.

- F. **McNamara-O'Hara Service Contract Act (SCA).** The SCA governs maintenance and other service work and applies when the Federal Government or the District of Columbia contracts directly for such services and the value of the contract exceeds \$2,500. SCA-coverage in HUD programs is limited because HUD infrequently enters into direct contracts for services in the administration of its programs. By way of an example, however, a contract for maintenance service at a HUD-owned multifamily property would be covered by the SCA. Like DBA contracts, SCA contracts are managed under the auspices of HUD's Office of the Chief Procurement Officer. SCA enforcement authority resides *solely* with DOL.

2-3 **HUD Davis-Bacon Related Acts.** Related Acts are program statutes that contain a provision(s) requiring compliance with the wages that the Secretary of Labor finds to be prevailing pursuant to the Davis-Bacon Act. These are commonly referred to as the *Davis-Bacon and Related Acts* or *DBRA*. HUD Related Acts include (but are not limited to) the:

- A. National Housing Act;
- B. U. S. Housing Act of 1937;
- C. Housing and Community Development Act of 1974;
- D. National Affordable Housing Act of 1990; and
- E. Native American Housing Assistance and Self-determination Act of 1996, each as amended.

Many of the labor provisions in HUD Related Acts contain applicability thresholds based upon the number of dwelling units involved. Some thresholds are based upon the amount of HUD assistance or the use of HUD funds or assistance. In addition, most HUD Related Acts contain exemptions from prevailing wage coverage for bona-fide

volunteers. It is important for DBLS and LCA staff to be familiar with the statutory provisions and how these are interpreted.

The labor provisions found in current HUD Related Acts are excerpted for reference in Appendix II-4 to this handbook. Applicability factors relating to specific HUD Related Acts are in Appendix II-5.

2-4 **Davis-Bacon applicability by administrative instrument.** If a HUD program statute does not itself impose prevailing wage requirements, HUD may decide to impose these requirements through an administrative instrument such as regulations or other directives, or by grant or contract agreements. Examples include coverage of the Capital Grant Program, Assisted Living Conversion Program for Section 202 projects, the Housing Finance Agency Risk-Sharing Demonstration Program, the FHA Housing Finance Agency Risk-Sharing Program, and the Assisted Housing Drug Elimination Program.

2-5 **Exemptions and exclusions from prevailing wage coverage.** Some HUD programs are not covered because the statute authorizing the program does not contain prevailing wage language. Examples include McKinney Act programs (other than Single Room Occupancy moderate rehabilitation), single-family FHA insurance programs where there is no language in the statute imposing prevailing wage requirements, and multifamily refinancing under Section 223(f) of the National Housing Act. In addition, Indian CDBG is excluded from coverage because HUD has exercised statutory authority to waive prevailing wage requirements. (See also exclusions for bona fide volunteers in paragraph 2-8.)

Rental Assistance Demonstration Second Component (RAD 2) was created in order to give owners of HUD's rental assistance legacy programs (Rent Supplement, Rental Assistance Payment, Section 8 Moderate Rehabilitation (including Moderate Rehabilitation Single Room Occupancy) and Section 202 elderly housing programs) the opportunity to enter into long-term Section 8 project-based vouchers (PBV) or project-based rental assistance (PBRA) contracts that facilitate the financing of improvements. For RAD 2 conversions to PBV/PBRA, DBRA does not apply to already assisted units. DBRA does apply to the construction or rehabilitation of nine units or more that are newly assisted, including through transfer of assistance, within the PBV/PBRA contract. (See RAD Notice Revision 4, [H 2019-09 PIH 2019-23](#), published 09/05/2019, and Revised RAD Notice, Federal Register Notice [84 FR 54630](#), published 10/10/2019.)

2-6 **Economic Development Initiative/Special Purpose Grants (EDISP).** EDISP grants are activities authorized in HUD appropriations bills where specific projects are earmarked for funding. Generally, EDISP grants are not covered by prevailing wage requirements because the appropriations bills do not contain language imposing Davis-Bacon provisions. However, if other HUD assistance is utilized in conjunction with an EDISP grant, the project associated with the grant may be subject to Davis-Bacon wage provisions to the extent that such provisions are imposed under the other HUD assistance.

- 2-7 **HUD-determined prevailing wage requirements.** HUD-determined prevailing wage rates are applicable to Public, Indian, and Hawaiian housing programs because of provisions in the U.S. Housing Act of 1937, as amended (USHA) and the Native American Housing and Self-Determination Act of 1996, as amended (NAHASDA). The USHA and NAHASDA are also Davis-Bacon Related Acts because both contain provisions requiring the payment of not less than Davis-Bacon prevailing wage rates to all construction laborers and mechanics employed in the development of low-income/affordable housing projects.
- A. **U.S. Housing Act of 1937 (USHA).** The USHA requires that maintenance laborers and mechanics employed in the operation of low-income housing are paid at a minimum the HUD-determined or adopted prevailing wage rates. The USHA also requires that architects, technical engineers, draftsmen, and technicians employed in the development of low-income housing are paid at a minimum the HUD-determined or adopted prevailing wage rates.
- B. **Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).** The NAHASDA contains provisions similar to the USHA requiring the payment of not less than HUD-determined prevailing wage rates to maintenance laborers and mechanics employed in the operation of affordable housing, and to architects, technical engineers, draftsmen and technicians employed in the development of affordable housing. NAHASDA prevailing wage provisions are applicable to Indian Housing Block Grants and to Housing Assistance for Native Hawaiians. An amendment to NAHASDA allows for the preemption of Davis-Bacon and/or HUD-determined wage rates by tribally determined prevailing wage rates for the Indian Housing Block Grant (IHBG) program. [See also *Office of Native American Programs (ONAP) Program Guidance No. 2003-04*, dated 2/5/2003.]
- 2-8 **Volunteers.** The labor standards clauses in most HUD program statutes contain provisions allowing for the use of bona-fide volunteers on projects subject to prevailing wage requirements. Using volunteers may be permitted by a statutory exemption or by statutory waiver authority. Volunteers are excluded from Davis-Bacon and HUD-determined prevailing wage coverage and do not receive compensation for their labor. However, volunteers may receive expenses, reasonable benefits, or nominal fees. (See also HUD Regulations 24 CFR Part 70.)
- A. **Bona-fide volunteer.** A bona-fide volunteer, for labor standards purposes, is defined as an individual who performs services for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered.
1. Individuals shall be considered volunteers only where their services are offered freely and without pressure and coercion, direct or implied, from an employer.
 2. An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the

individual volunteers. For example, a person that was employed as a covered laborer or mechanic on a project cannot be a bona-fide volunteer working on the same project.

- B. **Expenses, reasonable benefits, or nominal fees.** Volunteers may receive payments for expenses, reasonable benefits, or nominal fees in relation to the work for which they volunteered without losing “volunteer” status. Payment of expenses, benefits, or fees must be approved in advance by the HUD Labor Standards Specialist (LSS) responsible for the jurisdiction involved.

Examples of expenses, reasonable benefits, and nominal fees include uniform allowances, reimbursement for cleaning expenses or wear and tear on personal clothing, and out-of-pocket costs for meals and transportation. Such payments are not tied to productivity and in no way are construed as wages or other paid compensation. (See also 24 CFR Part 70, § 70.3(b).)

1. Entities that propose to pay expenses, reasonable benefits, or nominal fees to volunteers shall request a determination from the LSS that the proposed payments meet the regulatory criteria for such payments.
2. The LSS must respond to such requests within 10 HUD work days following receipt by the LSS of sufficient information to allow for a determination.

- C. **Recordkeeping.** Entities receiving the services of volunteers must maintain records relating to any work that is performed on projects or contracts otherwise covered by federal prevailing wage requirements.

1. For projects that utilize all-volunteer labor, these records must include the name and address of the agency sponsoring the project, a description of the project, the number of volunteers, the hours of work they performed, and where a waiver of prevailing rates is involved, the type of work performed by the volunteers (See 24 CFR Part 70, § 70.5(c)) .
2. For projects that utilize a mix of volunteer and paid workers, these records must include the items above and the names of the volunteers.

- 2-9 **Sweat equity.** Sweat equity programs permit members of eligible families to provide labor in exchange for program benefits including acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Sweat equity participants are exempt from federal prevailing wage requirements. Sweat equity is permitted under HOME (see § 255 of the NAHA) and (for homeownership) in Indian and Native Hawaiian housing programs under NAHASDA (see also *ONAP Program Guidance No. 2003-03*, dated 2/4/2003).

- 2-10 **U.S. Department of Labor Regulations.** Reorganization Plan No. 14 of 1950 (discussed in Chapter 1) authorizes the Secretary of Labor to prescribe standards, regulations and procedures which are observed by federal agencies, including HUD, in the administration and enforcement of federal labor standards provisions such as Davis-Bacon wage requirements. These regulations are published at Title 29 in the Code of Federal

Regulations. These regulations are discussed in more detail throughout this handbook as related topics are covered. The relevant parts of the plan include:

- A. **Part 1 – Procedures for Predetermination of Wage Rates.** This part explains how DOL determines the prevailing wage rates under the Davis-Bacon Act. It defines “prevailing wage” and describes how DOL conducts wage surveys and makes its prevailing wages determinations. It discusses when revisions to wage determinations (e.g., supersedeas wage determinations, modifications) become effective with regard to events such as contract awards, starts of construction, bid openings, FHA initial endorsements, and Section 8 agreements to enter into Housing Assistance Payments (HAP) contracts.
- Part 1 also discusses corrective wage decisions, and reconsideration by the Wage and Hour Administrator of wage determinations or decisions by the Administrator concerning the application of a wage determination.
- B. **Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.** This part requires the submission of weekly certified payroll reports, discusses permissible payroll deductions from wages, and describes acceptable methods of wage payment. It also concerns the anti-kickback provisions of the Copeland Act.
- C. **Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act).** This part concerns the responsibilities of federal agencies in the administration and enforcement of Davis-Bacon wage requirements, Copeland Act anti-kickback provisions, certified payroll and wage payments requirements, and CWHSSA overtime provisions. Part 5 is likely the most relevant for HUD Labor Standards staff. It contains definitions and provisions that must be included in the contracts for all covered work, standards for contractor and subcontractor compliance, enforcement requirements and remedies, debarment proceedings, liquidated damages provisions for CWHSSA overtime violations, and reporting requirements.
- D. **Part 6 – Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts.** This part concerns administrative hearings on enforcement of the Davis-Bacon and Related Acts, the Copeland Act, Contract Work Hours and Safety Standards Act, and the Service Contract Act. It primarily involves DOL responsibilities and procedures.
- E. **Part 7 – Practice Before the Administrative Review Board with Regard to Federal and Federally Assisted Construction Contracts.** This part concerns the rules of practice of the Administrative Review Board (formerly known as the Wage Appeals Board). This part primarily involves responsibilities and procedures within the Department of Labor.

2-11 **HUD program regulations.** HUD program regulations are published at 24 CFR and are available online at www.gpo.gov. Some HUD program regulations contain requirements pertaining to labor standards provisions. HUD regulatory provisions will be discussed throughout this handbook and its appendices, as appropriate.

- A. **Part 70 – Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates.** This part governs the use of bona-fide volunteers on projects subject to prevailing wage requirements. It contains definitions and procedures for implementing exemptions and obtaining waivers from HUD concerning prevailing wages for volunteers. (See paragraph 2-8.)
- B. **Part 92 - Home Investment Partnerships Program.** This part, specifically § 92.354, contains the labor standards provisions applicable to the HOME program. It discusses applicability issues and prevailing wage exclusions for volunteers and sweat equity.
- C. **Part 200 – Introduction to FHA Programs.** This part, at § 200.33, contains the labor standards provisions applicable to FHA insurance programs.
- D. **Part 266 – Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans.** This part, at § 266.225, contains the labor standards provisions applicable to Housing Finance Agency risk-sharing projects.
- E. **Part 570 – Community Development Block Grants and Neighborhood Stabilization Program.** This part, at § 570.603, contains the labor standards provisions applicable to Community Development Block Grants programs, including the Neighborhood Stabilization Program (NSP).

NSP Program Income. In addition to DBRA applying whenever NSP funds are used for the construction or rehabilitation of property with eight or more units, DBRA also applies if income from the sale of homes that were constructed with NSP funds (referred to as program income) is then used "towards multi-family" property of eight or more units.

The eight or more-unit threshold applies to the number of units on the property, not the number of units being rehabbed. Property refers to "one or more contiguous lots or parcels, commonly-owned and operated as one rental, co-op, or condominium project." For details, see

https://files.hudexchange.info/resources/documents/NSPPolicyAlert_DavisBacon.pdf.

- F. **Part 891 – Supportive Housing for the Elderly and Persons with Disabilities.** This part, at § 891.155(d), contains the labor standards provisions applicable to Section 202 and Section 811 projects.

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- G. **Part 905 – Public Housing Capital Fund Program.** This part, at § 905.308(b)(3), contains the labor standards provisions applicable to Capital Fund activities.
 - H. **Part 983 – Project Based Voucher Program.** This part, at § 983.4 and § 983.154(b), contain the labor standards provisions applicable to the Project Based Voucher program.
 - I. **Part 1000 – Native American Housing Activities.** This part, at § 1000.16, contains the labor standards provisions applicable to Indian housing programs.
 - J. **Part 1006 – Native Hawaiian Housing Block Grant Program.** This part, at § 1006.345, contains the labor standards provisions applicable to the Native Hawaiian Housing Block Grant Program.

Related Appendices

- II-1 HUD Davis-Bacon Related Acts
- II-2 Davis-Bacon Act/Copeland “Anti-kickback” Act
- II-3 Contract Work Hours and Safety Standards Act
- II-4 Federal Labor Standards Coverage in Major HUD Programs
- II-5 Factors of Labor Standards Applicability

Chapter 3 DAVIS-BACON WAGE DECISIONS

- 3-1 **Introduction.** The U.S. Department of Labor (DOL) is responsible for determining prevailing wage rates for construction work pursuant to the Davis-Bacon Act and publishes schedules of these wage rates online. DOL regulations pertaining to the determination, publication, use, and effectiveness of Davis-Bacon wage decisions (also known as wage determinations) are found at 29 CFR Part 1.

Local Contracting Agencies must submit requests and reports for DOL review, other than additional classification requests (see paragraph 3-17 (C)), through the HUD Labor Standards Specialist.

- 3-2 **Definition of wage decisions.** The term “wage decision” includes the original decision and any subsequent decisions that modify, supersede, correct, or otherwise change the provisions of the original decision. The term “wage decision” is used within this chapter to mean the Davis-Bacon wage decision. The terms wage decision and wage determination are used interchangeably.

A wage decision is a schedule of construction work classifications, wage rates, and fringe benefits that represent the *minimum* rates that must be paid to workers employed in those classifications. General wage decisions are established for defined geographic areas, usually by county or group of counties, and the four characters of construction work.

- 3-3 **Character of work.** There are four basic categories (or characters) of general wage decisions based on the type of construction activity. DOL established these categories and provides details of each one in its [*All Agency Memoranda Nos. 130 and 131*](#). DOL provides further guidance in [*All Agency Memorandum 236*](#), [*Prevailing Wage Resource Book*](#), and [*Field Operations Handbook, Chapter 15*](#). The four categories include:

- A. **Residential.** Residential construction includes the construction, alteration, or repair of single-family houses or apartment buildings of no more than four (4) stories in height. This typically includes all incidental items such as site preparation work, utilities, and sidewalks, unless there is an established area practice to the contrary. (Refer to paragraph 3-6(B) part 1 for the definition of the term incidental.)
- B. **Building.** Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This category includes buildings *exceeding four (4) stories in height that have housing units* and buildings of *four (4) stories or less that do not have housing units*. This category also includes incidental items such as grading, sidewalks, and utilities. Building examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, parking garages, and dormitories.

- C. **Highway.** Highway construction includes the construction, alteration, or repair of roads, streets, highways, alleys, parking areas, and other similar projects not incidental to the main category of construction, which is either residential or building for housing development projects.
- D. **Heavy.** Heavy construction includes those projects that are not properly classified as “residential,” “building,” or “highway.” Some examples include antenna towers, canals, landscaping, drainage and irrigation projects, permanent erosion control, storm sewers and storage tanks.

3-4 **Types of wage decisions.** Wage decisions are issued in two ways: general wage decisions and project wage decisions.

- A. **General wage decisions.** Most Davis-Bacon wage decisions are general wage decisions. General wage decisions contain prevailing wage rates for the character(s) of work designated in the wage determination. DOL publishes superseadas general wage decisions annually, and publishes modifications throughout the year. DOL usually publishes these annually and may modify or supersede them throughout the year. Local Contracting Agencies (LCAs) and HUD Labor Standard Specialists (LSS) may select general wage decisions without advance notice or approval from DOL; however, questions concerning the use of selected general wage decisions must be referred to DOL (*see* 29 CFR 1.6(b)). Most Davis-Bacon wage determinations for HUD projects will consist of General Wage Decisions.
- B. **Project wage decisions.** If an appropriate wage decision (by location, character of work, or specific trade required) is *not* published in the general wage decisions, the LCA or HUD shall request a project wage decision from DOL. Project wage decisions are applicable *only* to the construction work specified on the request to DOL and listed on the front page of the project wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision.

Note: A project wage decision may be necessary even when a general wage determination exists for the project’s geographic location and character of work. For example: a project involves only roof replacement on a 4-story apartment building and the only classification needed for the entire contract is a roofer. A general wage decision is published for residential construction in the county where the project is located; however, the general wage decision does not include a roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and the LCA or HUD will need to request a project wage decision from DOL.

- 3-5 **Obtaining wage decisions.** General wage decisions and modifications are available at www.sam.gov. This is the *only* official online publication of general wage decisions. Project wage decisions must be requested on a case-by-case basis from DOL (see paragraph B below).
- A. **General wage decisions.** The official website www.sam.gov provides both current and previous general wage decisions and modifications.
 - B. **Project wage decisions, as needed.** The responsible contracting officer or administrator (see 3-6 below) will submit a completed SF-308, *Request for Determination and Response to Request*, to the DOL National Office, allowing 30 days for return of the project wage decision from DOL.
- 3-6 **Selecting the correct wage decision.** The responsible contracting officer (also referred to as the contract administrator) selects the wage decisions for specific contracts or projects. For HUD-administered projects (e.g., FHA-insured multifamily development), the responsible contracting officer is the LSS. In addition, the LSS provides technical support and oversight to LCAs administering HUD programs in selecting the appropriate wage decisions. The responsible contracting officer selects the applicable wage decision(s) based on the geographic location and the character of work (Residential, Building, Highway, and/or Heavy) applicable to the project.
- A. **Geographic location.** General wage decisions are published by county or groups of counties. The applicable geographic location is generally the county in which the project is located.
 - B. **Character of work.** The applicable character of work is determined by the principal purpose(s) of the project and the end result of the construction. DOL guidance *All Agency Memorandum 130* states that a “project” is classified as belonging in one of the four categories of construction that are discussed in paragraph 3-3: Residential, Building, Heavy, and Highway. In certain cases, a single project may contain separate and distinguishable components that fall into different categories of construction.
 - 1. ***Incidental*** construction items are elements of a project whose function is to support the principal purpose and do not change the overall character of work. Examples of incidental items include sidewalks and handrails installed to support residential or building projects. While sidewalks, in and of themselves, constitute “highway” construction, this element installed in conjunction with a residential or building project is considered to be incidental to the principal purpose of the construction and is subject to the same wage decision that applies to the principal purpose.
 - 2. ***Substantial*** items are defined by DOL in All Agency Memorandum 236 as construction items that exceed either \$2.5 million or 20% of the total project

cost.¹ Additional general wage decisions may be applicable to a project that contains substantial construction items that fall into different categories of construction. (See paragraph 3-6(E), below.)

3. **End result** refers to the outcome of the construction activity determining the character of work. This is a factor only in rehabilitation projects. For example, if an existing 4-story office building is undergoing rehabilitation and the end result is an apartment building that is four (4) stories or less, the character of work is Residential. Conversely, if a single family-home is renovated and the end result is a community center, the character of work is Building.

C. **Considerations for residential construction.** Residential construction is defined as projects involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four (4) stories in height. This includes incidental items such as earthwork, utilities, and sidewalks. Generally, any housing development (four stories or less) is classified as Residential.

1. **First story (floor).**
 - a. A lowermost story is considered a first story (floor) if it is:
 - (1) Primarily above exterior grade on one or more sides; and,
 - (2) Contains at least 50% living accommodations or related nonresidential uses (e.g., laundry space, recreation/hobby rooms, commercial use, and/or corridor space).
 - b. A lowermost story is considered a first story (floor) without regard to a percentage test if it is primarily above ground on two or more sides.
 - c. A lowermost story is considered a first story (floor) if it contains the main entrance to the building.
 - d. A lowermost story is considered a first story (floor) without regard to exterior grade if it is used for apartment space in a way substantially similar to the upper floors.
2. **Basement.** Stories below grade used for storage, parking, mechanical systems/equipment, etc., are considered basement stories which are not used in determining the building's height.
3. **Attic.** An attic is an unfinished space located immediately below the roof. Such space is not used in determining a building's height even if used for storage purposes.

¹ AAM 236 states that to ensure that the monetary threshold, currently \$2.5 million, continues to be a reliable indicator of when construction items in a different category are substantial, the Wage and Hour Division will re-evaluate annually whether an update to the monetary threshold is warranted by inflation and rising costs. If WHD updates the monetary threshold, the most recent WHD monetary threshold should be used in determining whether a construction category is substantial. Note that WHD may update the monetary threshold; the 20% threshold will remain the same.

4. **Half-story.** A half-story over the building's fourth story classifies the character of construction as building. A half-story is a story finished as living accommodations located wholly or partially within the roof frame with floor space at least half as large as the story below. (Space with less than five (5) feet clear headroom shall not be considered as floor area.)
 5. **Top story.** The top story, not finished for living accommodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height.
 6. **Housing unit requirements.** For assisted living properties, a Residential wage decision will apply if the property is four (4) stories or less and each assisted living unit has its own kitchen and bathroom. Additional considerations include:
 - a. For assisted living projects with memory care units, and/or units that do not have self-contained kitchens and bathrooms, a Building wage decision may apply based on AAMs 130, 131, and 236.
 - b. If an assisted living project that is four (4) stories or less has a mix of independent living and memory care units, and/or a mix of units with and without self-contained kitchens and bathrooms, the LLS or LCA must determine if one component of the mix of units is substantial, as defined above in paragraph 3-6(B) Part 2. If so, Residential rates and Building rates may be required.
 - c. Single room occupancy (SRO) projects are *exempt* from these criteria. SRO projects are not required to have a kitchen and bathroom in each housing unit. (*Dutch Hotel (SRO) Kitchen, WAB No. 90-29, March 22, 1991.*)
 7. **Mixed-use projects.** Some projects may contain elements of different construction characters that are separate in function to each other. For example, a three-story building and a five-story building in a multifamily project each has an independent purpose and function and are not incidental to the other. In such cases, it is appropriate to identify more than one character of work and to assign multiple wage decisions, i.e., a wage decision(s) covering each character of work involved.
- D. **Multiple wage decisions.** "Multiple wage decisions" refers to the responsible contracting officer or administrator selecting more than one general wage decision for a single project.
1. The responsible contracting officer initially selects the primary category of construction applicable to the covered project by identifying the category most consistent with the primary purpose of the project.
 - a. For example, in HUD's multifamily housing programs, the primary component of the project is residential housing units, and as such, the

- LSS should select either Residential (4 stories or less) or Building (5 stories or more) as the primary category of construction, and select the corresponding Residential or Building general wage determination for inclusion in the project's construction contract.
2. The responsible contracting officer then evaluates whether to select an additional wage decision for construction items of a separate category, e.g. if Residential is the primary category of construction, determining if Building, Highway, or Heavy also apply to the project.
 - a. In instances where functionally incidental construction items would be in a different category of construction, as those categories are defined in AAM 130, if constructed alone, and (b) meet or exceed the AAM 236 thresholds for substantial cost, the contracting officer will generally apply the wage determination for the different category in addition to the wage determination for the overall project.
 - b. However, where the cost of construction items in a different category is not significantly greater than \$2.5 million² or 20% of the total project cost, HUD will undertake additional analysis and consult with DOL to determine whether HUD's selection of a separate wage decision is appropriate and consistent with local area practice.

For HUD Staff: The Deputy Director will consult with HQLS for approval of multiple wage decisions for a housing development project. It is important to note that for these types of projects, multiple wage decisions come through HQLS, which in turn will consult with DOL, as needed. HQLS will interact with the DOL National Office on the final decision as necessary.

For LCA staff: Be aware of potential multiple wage decision possibilities. Projects should be closely scrutinized for substantial work components that might fall into different categories of construction requiring separate wage decisions if the components exceed either \$2.5 million³ or 20% of the total project cost.

Examples include:

- A mixed-use project (see paragraph C-7 above).
- A four-story apartment complex with an adjacent two-story parking garage that costs \$3 million. In this case, residential wage rates apply to the apartment complex and building wage rates apply to the parking garage.
- A five-story apartment building with a playground and outdoor pool or other structures. Building wage rates apply to the apartment building. Heavy construction wage rates apply to the playground and pool if their costs exceed either \$2.5 million⁴ or 20% of the total project cost.

² See footnote 1 regarding use of any updated WHD monetary threshold.

³ See footnote 1 regarding use of any updated WHD monetary threshold.

⁴ See footnote 1 regarding use of any updated WHD monetary threshold.

Given the numerous possibilities for multiple wage decisions, LCA staff are encouraged to consult with their LSS counterparts at HUD for guidance whenever needed.

- E. **Davis-Bacon compliance on projects with multiple wage decisions.** The developer/prime contractor must ensure that all laborers and mechanics receive not less than the applicable wage rate based upon the classification of work they are doing in relation to the wage decision assigned to the character of the construction work that is being performed. Compliance may be established in the following manners:
1. **Pay the highest of all wage rates.** The developer/prime contractor may establish compliance by ensuring the payment of the highest wage rate on all applicable wage decisions for each work classification. *Or,*
 2. **Utilize wage rates on all wage decisions.** The developer/prime contractor may utilize the wage rates contained in all the wage decisions assigned to the project provided that they comply with the following standards:
 - a. The project/contract specifications must clearly delineate which construction items are subject to each selected wage decision.
 - b. The developer/prime contractor must post all selected wage decisions at the job site with an explanation as to which construction items are covered by which applicable wage determination.
 - c. The developer/prime contractor must establish adequate controls to ensure that all covered workers are paid under the wage decision applicable to their respective construction work.
 - d. All employers (contractor, subcontractors, lower-tier subcontractors) must prepare, submit, and maintain accurate employee time and payroll records that evidence the selected separate wage decisions were properly applied to the relevant construction work.
- 3-7 **Modifications.** General wage decisions and project wage decisions may be modified from time to time to keep them current, correct errors, and for other purposes. Modifications may be limited to one or more particular work classifications and wage rates. Modifications are effective to a project if HUD or an LCA receives them, or if notice of the modification is published at <https://beta.sam.gov> prior to the lock-in date. (See paragraph 3-10 for additional lock-in date guidance.) Modifications to a project wage decision expire on the same date as the original project wage decision. A modification to a general wage determination remains in effect until it is superseded by a subsequent modification, or the original general wage decision is superseded or cancelled.
- 3-8 **Supersedeas wage decisions.** A supersedeas wage decision stops the original wage decision completely and replaces it. The most common supersedeas wage decisions are those published annually to replace the prior year's general wage decisions to reflect the new calendar year, and frequently involve no changes to the work classifications or wage rates. However, supersedeas wage decisions may involve changes in a large number of

job classifications and/or wage rates after DOL publishes new wage surveys. Supersedeas wage decisions are effective to projects in the same manner as modifications.

3-9 **Letters of inadvertence.** Letters of inadvertence are issued by DOL to correct errors in the written text of a wage decision such as clerical errors made in processing the schedule of wage rates. The corrections issued in a letter of inadvertence shall be included in any bid documents, contract specifications, and/or in any on-going contract retroactively to the start of construction.

3-10 **Lock-in dates, use and effectiveness of wage decisions.** General and project wage decisions become effective or “locked-in” for a particular contract or project usually not later than the date construction starts. Once a wage decision is “locked-in”, subsequent modifications or supersedeas wage decisions are not effective for that contract/project. However, prior to the “lock-in” date, modifications and supersedeas wage decisions shall be considered to ensure consistency with DOL regulations.

Project wage decisions shall be monitored to ensure that the “lock-in” date occurs before the project wage decision expires. The “lock-in” date is also referred to as the “wage decision effective date.” (See also DOL Regulations at 29 CFR § 1.6.)

General and project wage decisions shall be effective (locked-in) on the date the contract is awarded or the date construction starts, whichever may occur first, except as follows:

A. **Contracts entered into pursuant to competitive bidding.** General wage decisions shall be locked-in on the date that bids are opened *provided* that the contract is awarded within 90 days after bid opening. If the contract is awarded more than 90 days after bid opening, the general wage decision shall be updated as of the date of award unless an extension is obtained (see paragraph D, below). A project wage decision shall be locked-in at contract award. Modifications to a general or project wage decision published at <https://sam.gov> or received by HUD or an LCA prior to the lock-in date shall be effective with respect to the contract/project.

Exception for competitive bid procedures ONLY: A modification to a general or project wage decision published or received less than 10 days before bid opening may be disregarded if it is found that there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. A record of such finding must be made to the contract/project file.

B. **Projects assisted under the National Housing Act (e.g., FHA-insured).** A general wage decision shall be locked-in on the date the mortgage is initially endorsed *provided* that construction starts within 90 days after initial endorsement. If construction starts more than 90 days after initial endorsement, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraphs D – F). A wage decision shall be locked-in at initial endorsement or start of construction, whichever occurs first. Modifications published or received prior to the lock-in date shall be effective with respect to that project.

C. **Projects to receive Section 8 rental payments assistance under the U.S. Housing Act of 1937.** A general wage decision shall be locked-in on the date of the agreement to enter into a housing assistance payments contract (AHAP) or project rental assistance agreement (APRAC) or analogous instrument is executed *provided* that construction starts within 90 days after such execution. If construction starts more than 90 days after execution of the AHAP/APRAC, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraph D, below). A project wage decision shall be “locked-in” on the date the AHAP or APRAC, or analogous instrument is executed or the start of construction, whichever occurs first. Modifications published/received prior to the lock-in dates shall be effective with respect to that project.

D. **Request for extension for general wage decisions.** In those cases where the 90-day time limitation for contract award (paragraph 3-10(A)) or construction start (paragraphs 3-10(B) or (C)) has been exceeded, HUD may request an extension to the effective date of the prior wage decision from DOL.

The request must be supported by a statement of the factual circumstances and a finding that the extension is necessary and proper in the public interest to prevent injustice or undue hardship. The LSS or LCA staff shall prepare these requests and submit them through the Deputy Director to HQLS. HQLS shall consider the request and, if warranted, shall transmit it to DOL for the Wage and Hour Administrator’s consideration. (See also DOL Regulations at 29 § 1.6(c)(3)(iv).)

E. **Special instructions concerning expiration of project wage decisions.** Project wage decisions are generally valid for 180-days from issuance. A project wage decision is void if it is not locked-in before the expiration date. HUD may request an extension when it appears that a project wage decision may expire before the lock-in date. The LSS or LCA staff shall follow the instructions at 3-10(D) above to submit an extension request. (See also DOL Regulations at 29 CFR § 1.6(a)(1).)

F. **Special instructions concerning FHA-insured projects.** HUD may request a variation from the lock-in date required by 29 CFR § 1.6 so that the project may proceed with the wage decision as it was published on the date that the firm commitment was issued when:

1. a modification or supersedeas decision is published (general) or received (project) by HUD before initial endorsement or initial closing but *after* the issuance of the firm commitment by HUD; *and*
2. less than 90-days has transpired between firm commitment and the set initial endorsement/closing date.

The LSS shall follow the instructions at paragraph 3-10(D) above to submit a request for variation. (See also DOL Regulations at 29 CFR § 5.14.)

3-11 **Retroactive wage decisions.** If HUD funding or assistance under a statute requiring the payment of Davis-Bacon wage rates is approved *after* contract award (or start of construction where there is no contract award), the LSS/LCA shall identify and obtain the Davis-Bacon wage decision in effect as of the contract award/construction start date. The applicable wage decision shall be incorporated into the contract specifications *retroactively* to the start of construction. (See also DOL Regulations at 29 CFR § 1.6(g).)

A. **Exceptions.** The two exceptions to retroactive wage decisions include:

1. The DOL Wage and Hour Administrator may issue a wage decision to be effective on the date of approval of HUD funding or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent an injustice or undue hardship. *And*, provided further that the Administrator finds no evidence of intent to apply for federal funding or assistance prior to contract award or start of construction, as appropriate. Such requests shall be prepared and submitted in the same manner, including appropriate supporting statements of fact and reasoning, as described at 3-10(D) above.
2. Davis-Bacon wage decisions will not be applied retroactively to work that occurred prior to the filing of an application for FHA mortgage insurance under the National Housing Act.

3-12 **Incorporation of wage decision and labor standards provisions in bid specifications and contracts.** The applicable Davis-Bacon wage decision, including modifications, and the applicable federal labor standards provisions must be made a part of the bid documents (if any) and/or contract specifications for any construction work subject to Davis-Bacon prevailing wage requirements. (See also DOL Regulations at 29 CFR § 5.5(a).)

A. **Incorporation in contracts and subcontracts.** Every ensuing construction contract or subcontract, and any lower-tier subcontracts must include the applicable Davis-Bacon wage decision and its modifications, and the federal labor standards provisions. The prime contractor is responsible for ensuring the incorporation of the wage decision and labor standards provisions in all subcontracts.

B. **Contract labor standards provisions.** HUD has forms containing Davis-Bacon labor standards provisions applicable to various HUD programs. These are applicable as follows:

1. **HUD-92554M, Supplementary Conditions of the Contract for Construction** - HUD-administered projects including FHA-insured multifamily development, Section 202/811.
2. **HUD-4010, Federal Labor Standards Provisions** - CPD programs including CDBG, Section 108, EDI/BEDI, and HOME.

3. **HUD-5370, General Conditions of the Contract for Construction** - Public and Indian Housing programs.
4. **HUD-5370-EZ, General Conditions for Small Construction/Development Contracts** - Public Housing and Indian Housing programs.
5. **HUD-52531-B, Agreement to Enter into A Housing Assistance Payments Contract, New Construction or Rehabilitation, Part II** - Public and Indian Housing programs, Section 8 Project-Based Vouchers.
6. **HUD-5679, Addendum to the HAP Contract - Labor Standards** - Project-Based Voucher HAP Contract and the Project-Based Rental Assistance HAP Contract under the Rental Assistance Demonstration.

Most of these forms are available at HUDClips online at https://www.hud.gov/program_offices/administration/hudclips/forms/ or can be found by utilizing the search feature on www.hud.gov. In addition, individuals can request printed forms through HUD's Customer Service Center by calling (800) 767-7468.

C. **Acceptable methods of incorporation.** The applicable wage decision and federal labor standards provisions may be incorporated into bid specifications and contracts by one or more the following methods. (See also [Labor Relations Letter LR-06-03.](#))

1. **Incorporation by hard-copy.** The applicable HUD labor standards form and wage decision may be physically bound or attached to the contract (and bid specifications, if applicable) as issued by HUD (HUD forms) or DOL (Davis-Bacon wage decisions).
2. **Incorporation into other documents.** The labor standards clauses/text of the applicable HUD form and wage decision may be incorporated into other documents (e.g., into a program participant's own forms) that are bound/attached to the contract (and bid documents, if applicable) or incorporated by reference (see paragraph 3, below). The program participant is responsible for the accuracy of the content. In all cases, the requirements imposed by the applicable HUD form and wage decision remain in force.
3. **Incorporation by reference.** The applicable HUD form and wage decision, or other documents containing the HUD labor standards clauses/wage decision, may be incorporated into the contract and any bid specifications by reference.

The reference must be specific as to the exact form or clauses that are incorporated, and where the form or clauses may be accessed or obtained (e.g., specific HUD URL, agency web site). Davis-Bacon wage decisions may be incorporated by reference to <https://sam.gov> and to the specific wage decision number, modification number, and date of the applicable wage

decision. Hard-copies of any referenced form, clauses, and/or Davis-Bacon wage decision must be provided upon request.

- 3-13 **Use of the wrong wage decision/failure to include a wage decision or contract labor standards provisions.** The use of the wrong wage decision and/or labor standards provisions in the bid documents/contract specifications, or the failure to include the required wage decision and appropriate labor standards provisions does not relieve the prime contractor from potential liabilities for compliance and enforcement actions related to meeting the obligations of the proper wage decision and labor standards. Any such error must be promptly rectified. (See also DOL Regulations at 29 CFR § 1.6(f).)

- 3-14 **Project Wage Rate Sheet.** Some general wage decisions cover large areas (e.g., several counties or different characters of construction) and may contain wage rates that do not apply to the contract/project to which the wage decision applies. Such wage decisions can be difficult to decipher and confusing to contractors and subcontractors, and to the workers reviewing the wage decision to determine whether they are being paid correctly.

For ease of reference for the LSS/LCA, the prime contractor and any subcontractors, and the workers, the LSS/LCA may prepare a form HUD-4720, *Project Wage Rate Sheet*, which should reflect the most commonly used work classifications and wage rates as contained in the wage decision applicable to the project. The Project Wage Rate Sheet does not replace the wage decision; it is only provided as a convenience. If there is a conflict between the Project Wage Rate Sheet and the incorporated wage decision, the wage decision prevails.

- 3-15 **Posting the wage decision and DOL notice to workers.** The prime contractor is responsible for posting a copy of the applicable wage decision and any additional classifications at the site of work in a prominent place accessible to the workers and protected from wind, rain, vandalism, etc. A copy of the DOL poster [WH-1321](#), *Employee Rights under the Davis-Bacon Act*, with the name, address, and telephone number of the LSS/LCA or other responsible contracting officer shall also be posted at the job site with the applicable wage decision. A Project Wage Rate Sheet may be posted at the job site with the DOL poster and wage decision so that the construction workers may more readily determine the wage rate(s) to which they are entitled.

- 3-16 **Review for missing work classifications and wage rates.** The LSS/LCA shall review the applicable wage decision to determine whether all work classifications required for the construction work are contained in the classifications and wage rates listed within the applicable wage decision.

The prime contractor is also responsible for identifying whether any classifications that are required for the project are included in the wage decision. The LSS/LCA shall notify the prime contractor of any missing work classifications; likewise, the prime contractor shall inform the LSS/LCA of any missing work classifications it may detect during its own review. The LSS/LCA shall provide instructions and assistance to the prime contractor concerning requests for additional classifications and wage rates.

- 3-17 **Additional work classifications and wage rates (conformance).** After contract award, if it is determined that additional work classifications are required because the wage decision lacks all the necessary classifications and wage rates, the prime contractor and, if applicable, its subcontractors employing workers in such classification(s) shall request an additional work classification and propose a wage rate and fringe benefits for such classification on form SF-1444, *Request for Authorization of Additional Classifications and Rates*. The contractor or subcontractor shall make its request through the LCA or LSS, as appropriate, to the DOL at whd-cbaconformance_incoming@dol.gov for a final decision. The LSS/LCA shall assist the employer in preparing the request, and if necessary, provide guidance on the policies and procedures involved.

Note: Additional work classifications and wage rates may be requested *only* after the wage decision effective “lock-in” date. (See DOL Regulations at 29 CFR § 5.5(a)(1)(ii), All Agency Memorandum 213, and DOL guidance at <https://www.dol.gov/agencies/whd/government-contracts/construction/faq/conformance>)

- A. **Additional work classification and wage rate parameters.** Additional work classifications must be signed by DBLS for FHA insured projects managed by HUD and signed by the LCA contracting officer for projects managed by LCAs, and then forwarded to the DOL with the applicable wage decision where:

1. The requested work classification is used in the area of the project by the construction industry;
2. The work that will be performed by the requested work classification is not performed by a work classification that is already contained within the applicable wage decision;
3. The proposed wage rate for the requested work classification bears a reasonable relationship to the wage rates on the wage decision.

General guide. The wage rate and fringe benefits proposed for any additional classification must be in accordance with the guidance available in All Agency Memorandum 213. The proposed wage rate and fringe benefits should bear a reasonable relationship to the entirety of the rates within the relevant category.

There are four (4) basic categories: skilled crafts, laborers, truck drivers, and power equipment operators. Additional classifications proposed for power equipment operators must specify the type(s) of power equipment involved.

- B. **Making the request.** Although a request for additional work classification and wage rate may be prompted following an LSS/LCA review, the proposal must originate with the prime contractor/employer that will utilize the work classification. The prime contractor/employer must submit the request in writing. A basic request must identify the contract/project involved, the work classification requested, and the wage rate, including any bona-fide fringe benefits proposed. In

some cases, it may be necessary for the prime contractor/employer to describe the work that the requested work classification would perform. The prime contractor/employer should use form SF-1444, *Request for Authorization of Additional Classifications and Rates*, to submit the request.

- C. **LSS/LCA review of request.** The LSS/LCA will review the prime contractor's/employer's request to determine if it satisfies the approval criteria at 3-17(A). The LSS/LCA will contact the prime contractor/employer if clarification or additional information is needed to complete the review.
1. **Signing the request, reporting to DOL.** If the LSS/LCA review finds that the requested work classifications and wage rate/fringe benefits meet the criteria at 3-17(A), the LSS/LCA submits the completed SF-1444, *Request for Authorization of Additional Classifications and Rates*, related documentation, and the applicable wage decision to the DOL National Office for final decision using the DOL's dedicated email box whd-cbaconformance_incoming@dol.gov.
 2. **Disagreement with the request, referring for DOL decision.** If the LSS/LCA review finds that the requested work classification and wage rate/fringe benefits fails to meet the criteria (3-17(A), or if the parties do not agree on the proper classification or wage rate/fringe benefits for the work described, the LSS/LCA shall prepare an SF-1444, *Request for Authorization of Additional Classifications and Rates*, and a written report explaining the results of the review and any issues in dispute among the parties, and shall forward these along with a copy of the applicable wage decision to the DOL National Office for its decision using the same dedicated DOL email box.
 3. **DOL decision.** DOL regulations permit 30 days for DOL to respond to the SF-1444. The DOL will notify the LCA/LSS in writing of its decision.
 4. **DOL approval.** When DOL approves the requested additional work classification and wage rate/fringe benefits, the LSS/LCA shall provide a copy of the DOL notice of approval to the prime contractor/employer with instructions that the additional work classification and wage rate/fringe benefits must be posted on the job site with the wage decision.
 5. **DOL disapproval.** When DOL disapproves the requested work classification and wage rate/fringe benefits, DOL will notify the LCA/LSS in writing of the reasons why the request cannot be approved. DOL may also indicate what work classifications/wage rate/fringe benefits could be approved for the work involved if a modified request is submitted. DOL may also state in its response what is the appropriate classification, wage rate, and fringe benefits. The LSS/LCA shall notify the prime contractor/employer of the DOL decision and shall provide a copy of the DOL notice to the prime contractor/employer.

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6. **Notification to the prime contractor/employer.** The LSS/LCA shall notify the prime contractor/employer in writing of the results of the LSS/LCA review and/or DOL decision.
 7. **Requests for DOL reconsideration.** The LCA/LSS, the prime contractor/employer, or other interested parties may request reconsideration of the DOL decision on a requested additional work classification and wage rate/fringe benefits. Such requests must be made in writing accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information.
- 3-18 **Reconsideration on wage decisions.** HUD, the prime contractor/employer, or other interested parties may request reconsideration on any wage decision issued by DOL. Such requests are highly extraordinary and shall not be initiated by the LSS or Deputy Director without advance consultation with the Hub Director and HQLS. (See DOL Regulations at 29 CFR § 1.8.)
- A. **Content of requests.** Such requests must be made in writing accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information.
 - B. **Submission requirements.** Requests for reconsideration initiated by HUD must be submitted to DOL through the respective Deputy Director and HQLS.

Chapter 4 PAYROLL REPORTING: DAVIS-BACON COMPLIANCE REQUIREMENTS

4-1 **Introduction.** Davis-Bacon compliance involves the payment to all construction laborers and mechanics of not less than the prevailing wage rate established in the wage decision for the type (classification) of work and the hours of work they actually perform. This chapter pertains to Local Contracting Agencies (LCAs), employers on Federal Housing Administration (FHA) projects, and HUD staff. Section 4-10 lists the terms used and their definitions and interpretations.

- A. **Responsibilities of employers.** All contractors, subcontractors, and any lower-tier subcontractors are required to pay prevailing wages to all laborers and mechanics employed or working on the site of the work. This pay is without conditions and will occur at least once a week. The pay must be no less than the full amount of wages and bona fide fringe benefits contained in the wage decision. Employers must prepare, certify, and submit weekly payroll reports reflecting all the laborers and mechanics engaged in construction on the site of the work. Employers may also be required to submit related documentation to demonstrate compliance with these standards.
- B. **Responsibility of the principal or prime contractor.** The principal contractor (also referred to as the *prime* contractor) is responsible for ensuring all employers (itself, subcontractors, and any lower-tier subcontractors) comply with the labor standards provisions that are applicable to the project.

4-2 **Complying with prevailing wage obligations.** Davis-Bacon prevailing wage rates generally appear as a basic hourly rate plus fringe benefits, if any. “Prevailing wage” is made up of two interchangeable components: the basic hourly wage and fringe benefits. The total of the basic hourly wage and fringe benefits comprises the “prevailing wage” obligation. This obligation may be met by any combination of cash wages and creditable “bona fide” fringe benefits provided by the employer. For example:

The Davis-Bacon wage decision requires:

Basic Hourly Rate	\$10.00
Fringe Benefits	\$ 1.00
Total Prevailing Wage	\$11.00

Employers may comply by paying:

1. \$11.00 in cash wages;
2. \$10.00 plus \$1.00 in bona fide fringe benefits; or
3. Any combination of wages and benefits that totals \$11.00 per hour.

4-3 **Certified Payroll Reports (CPR).** To demonstrate compliance with labor standards requirements, each employer shall prepare, certify, and submit payroll reports for each week to the sponsor, applicant, or owner for any contract work that is performed. See 29 CFR § 5.5(a)(3)(ii) and section 4-11 for information on CPRs.

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- A. **CPR format.** Employers on an FHA project are highly recommended to use the HUD-authorized Electronic Payroll System (EPS) to submit CPR reports. If another format is used, the employer must ensure that all information from U.S. Department of Labor (DOL) Payroll Form WH-347 is included and that the HUD Labor Standards Specialist (LSS) can reasonably interpret it. Form WH-347 is available online at the Davis-Bacon and Labor Standards (DBLS) website at https://www.hud.gov/program_offices/bacon_and_labor_standards/olrform and on DOL's website at <https://www.dol.gov/whd/forms/wh347.pdf>.
- B. **Submission requirements.** Each employer shall submit payroll reports beginning with the first week such employer performs work on the site of the work. Employers shall submit reports promptly following the close of each such pay week.
- C. **"No Work" payrolls.** Employers are not required to submit reports for weeks during which no work was performed on the site of the work, *provided* that the payroll reports are numbered sequentially *or* that the employer has provided written notice that its work on the project has been suspended.
- D. **Weekly payroll certification.** Each weekly payroll submitted shall be accompanied by a "*Statement of Compliance*" that bears the original signature of the owner, executive/corporate officer, or a designee authorized by the owner or officer. The signature must be in ink; pencil is not acceptable. Signature stamps, photocopies and facsimiles are not acceptable. The employer may utilize the reverse side of DOL Payroll Form WH-347 as its Statement of Compliance or another document that contains the same language prescribed on the reverse of the WH-347.
- E. **False Submissions.** The falsification of any of the above certifications may subject the employer to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- 4-4 **Maintaining Payroll Records.** Each employer shall maintain payroll records with respect to their own workforce employed on the site of the work. The prime contractor shall maintain such records relative to *all* laborers and mechanics working on the site of the work during the course of the construction work for at least three years following the completion of the work. Such records shall contain:
- A. The name and an individually identifying 4-digit number for each laborer and mechanic. Employers must always maintain each employee's address and full social security number (SSN) during the construction of the project and for no less than three years following completion. This information must be made available to the prime contractor, HUD, and/or the LCA upon request.
- B. His or her correct work classification(s).
- C. Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits.
- D. Daily and weekly number of hours worked, including any overtime hours.
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- E. Gross earnings, deductions made, and actual net wages paid.
- F. Evidence pertaining to any fringe benefit programs.
- G. Evidence of any apprenticeship or trainee program approval, the registration of each apprentice or trainee, and the ratios and wage rates contained in the program.
- H. Evidence pertaining to any approved deductions made from an employees' pay.
For fuller details, see 4-10.K.

- 4-5 **Inspection of records and on-site interviews.** Each employer shall make the payroll reports and related documents available for inspection, copying, or transcription by authorized representatives of HUD or DOL. In addition, each employer shall permit authorized representatives to interview employees during working hours on the job site.

Failure by any employer to submit the required records, make them available, or permit on-site employee interviews may, after written notice to the contractor, cause a suspension of any further payment, advance, or guarantee of funds. In addition, failure to submit the records upon request or to make them available may be grounds for debarment action pursuant to 29 CFR § 5.12.

- 4-6 **Use of apprentices and trainees.** Apprentices and trainees may be compensated at rates less than those prescribed by the wage decision for their craft only in accordance with the following parameters:

- A. **Registration.** The apprentice or trainee shall be individually registered in a bona fide program certified by DOL or a State Apprenticeship Council (SAC). (*Note:* See paragraph 4.10.F concerning probationary apprentices and pre-apprentices.)
- B. **Wage rates.** Each apprentice and trainee shall not be paid less than the specified rate in the registered program for their level of progress. If the rate specified is represented as a percentage of the journey-worker rate for that craft, the percentage shall be applied to the corresponding wage rate contained in the applicable wage decision.
- C. **Fringe benefits.** Apprentices and trainees must receive fringe benefits as specified in the approved apprenticeship or trainee program. If the program is silent as to fringe benefits for apprentices/trainees, the apprentices/trainees must receive the full fringe benefit specified on the applicable wage decision for their craft.
- D. **Ratio to journey-workers.** The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journey-workers permitted to the employer by the DOL/SAC certified program. Apprentices or trainees who are employed at the site in excess of the allowable ratio shall be paid the wage rate contained on the applicable wage decision for the classification of work actually performed. If a contractor has both an apprentice and a trainee program, the trainees must be counted together with the apprentices in determining compliance with the allowable ratio (i.e., the journeymen may not be counted twice).

In general, employers shall comply with the allowable ratio on a day-to-day basis. However, back wages need not be assessed for minor, temporary, and inadvertent ratio imbalances that are promptly corrected.

- E. **De-certification.** In the event DOL or SAC withdraws approval of an apprenticeship or trainee program, the employer shall no longer be permitted to utilize apprentices/trainees at less than the predetermined rate for the type of work performed, *unless or until* an acceptable program is reestablished and approved.
- 4-7 **Requests for payrolls by outside parties.** In order to protect the personal privacy interests of employees, copies of payroll reports should be released to outside parties *only if* the employees' personal identifiers (e.g., name, address, individually identifying number) are first deleted pursuant to Exemption 6 of the Freedom of Information Act (FOIA).
- 4-8 **Safeguarding sensitive information.** HUD and LCA staff must take necessary precautions to safeguard sensitive information that may be collected or generated for labor standards purposes. Such sensitive information and associated documents include, but are not limited to SSNs, employee addresses, certified payroll reports, complainant statements, on-site interview records (form HUD-11), schedules of wages due, interview statements, compliance review notes, and enforcement reports. (See also [Labor Relations Letter LR-06-02](#), *Custody, security and disposal of federal labor standards compliance documents and investigative reports.*)
- 4-9 **Confidentiality.** The identity of any person providing information concerning the labor standards compliance of any contractor, subcontractor, and/or employer shall not be disclosed in any manner to anyone other than authorized federal officials *unless* written consent is provided in advance by such person. Additionally, any portions of a statement or written document provided by such person that would reveal the identity of the source shall not be disclosed without prior written consent. The disclosure of such statements and documents are governed by the provisions of the FOIA and the Privacy Act of 1974.
- A. **Privacy Act Release.** The HUD LSS shall make available a Privacy Act Release to each person making a statement or providing documentation that alleges underpayment of wages. A signed Privacy Act Release waives that person's right to confidentiality. Some situations demand the informant sign a Privacy Act Release to proceed with any enforcement action. For example:
1. Where the informant's information conflicts with the employer's information;
 2. Where the informant's information impeaches the payroll reports or other employer records;
 3. Where the informant alleges kickbacks; or
 4. Where the only way the LSS can assert a violation is with that person's information.
- B. **DOL investigative materials.** From time to time, DOL may furnish investigative material to HUD during its administration and enforcement operations. None of the material, other than computations of back wages and liquidated damages, and the

summary of back wages due, may be disclosed in any manner to anyone other than HUD or LCA staff responsible for administering the contract without prior approval from DOL.

4-10 **Definitions and Interpretations.**

- A. **Prime Contractor** means the principal contractor.
- B. **Subcontractor** means all subcontractors and lower-tier subcontractors.
- C. **Employer** means any contractor, subcontractor, or lower-tier subcontractor that has engaged the services of laborers or mechanics on the project.
- D. **Laborers and mechanics** mean those individuals whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., electrician). “Laborers” and “mechanics” include apprentices, trainees and helpers and, for contracts subject to CWHSSA, watchmen and guards.
 - 1. **Working foremen.** Foremen or supervisors that perform construction work and devote more than 20% of their time as a laborer or mechanic are treated, for labor standards purposes, as "laborers" or "mechanics" for their time spent working as a laborer or mechanic.
 - 2. **Exclusions.** Persons whose duties are primarily administrative, managerial, or clerical are not laborers or mechanics.
- E. **Employee.** Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person.
 - 1. **Working subcontractors.** Persons who perform the work of laborers or mechanics and who represent themselves to be owners of businesses, sole proprietors, or self-employed are **not** exempt from prevailing wage requirements. These laborers and mechanics are “employed” and are entitled to the prevailing wage for the type of work they perform and must be reported on payroll report for their craft, hours of work, and wages paid. For additional information, see [Labor Relations Letter LR-96-01](#), Self-Employed Laborers and Mechanics.
 - 2. **Administrative allowances.** HUD permits administrative allowances concerning payroll reporting and certification requirements relating to the following:
 - a. Owners of Businesses Working with Their Crew
 - b. Owner/Operators of Power Equipment
 - c. Owner/Operators of Trucks

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- F. **Apprentice.** An "apprentice" is a person employed and individually registered in a bona fide apprenticeship program. Bona fide programs are those that have been registered with DOL, Employment and Training Administration, Office of Apprenticeship, or with a DOL recognized State apprenticeship agency (SAC).
1. **Probationary apprentice.** A person in the first 90 days of probationary employment as an apprentice in a bona fide apprenticeship program but who has not yet been formally registered in such program may be considered an "apprentice" *provided* that DOL or SAC has certified that such person is eligible for probationary employment as an apprentice.
 2. **Pre-apprentice.** A person who is employed as a "pre-apprentice", that is, in a preparatory position which may result in registration in an apprenticeship program *is not* considered to be an "apprentice."
- G. **Trainee.** A "trainee" is a person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the Office of Apprenticeship Training.
- H. **Proper classification of work.** Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage decision and the actual type of work they perform and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of their level of skill.
- I. **More than one classification.** Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification *provided* that the employer maintains time records that accurately set forth the time spent in each classification in which the work was performed. If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rates for the classifications in which work was performed.
- J. **Wages.** This term means the basic hourly rate of pay plus any contribution irrevocably made by an employer to a bona fide fringe benefit fund, plan or program.
- K. **Fringe benefits.** Fringe benefits may include:
1. Sick, vacation or holiday pay;
 2. Costs to defray expenses of apprenticeship or similar programs;
 3. Medical or hospital care;
 4. Supplemental unemployment benefits;
 5. Life insurance;
 6. Pensions on retirement or death;
 7. Compensation for injuries or illness resulting from occupational activity;
 8. Other bona fide fringe benefits; or
 9. Insurance to provide any of the above.
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In addition, fringe benefits may reflect the rate of costs to the employer that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program.

Fringe benefits ***do not*** include employer contributions or payments required by other federal, state, or local law, such as FICA, workers' compensation, or unemployment compensation.

- L. **Overtime.** Overtime hours are defined as all hours worked in excess of 40 hours in any workweek. Where governed by federal labor standards, overtime hours shall be compensated at not less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.
- M. **Deductions.** The employer may make payroll deductions as permitted by DOL regulations in 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee (which will require documentation).
- N. **Site of work.** The "site of work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed. "Site of work" includes other adjacent or nearby properties used by the contractor/subcontractor in the construction of the project (e.g., fabrication sites) provided they are dedicated exclusively or nearly so to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

4-11 Information to include in Certified Payroll Report preparation. If an employer is not using an electronic payroll system to submit certified payroll reports, the reports shall be written in ink or using a computer. Payroll reports will need to include the following information and be easy for HUD DBLS staff or LCAs to interpret:

- A. **Employer information.** Enter the name and address of the employer involved.
- B. **Project information.** Enter the name, number, and location of the project involved.
- C. **Payroll report numbering.** Reports may be numbered sequentially beginning with "1." (Employers are not *required* to number payroll reports. However, HUD encourages this practice as it assists in managing payroll submissions.) The report must identify the name of the employer, the project for which the report is prepared, the week ending date, and the workdays throughout the workweek. The payroll for the last week of work performed on the project by each employer should be clearly marked *Final*.

- D. **Dates.** Enter the week ending date, the day of the week, and date for each day.
- E. **Employee information.** 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 reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractor's records.

- F. **Apprentices or trainees.** The first payroll on which any apprentice or trainee appears shall be accompanied with a copy of that apprentice's or trainee's registration in an approved program. A copy of the approved program pertaining to the wage rates and ratios shall also accompany the first payroll report on which the apprentice or trainee first appears.
- G. **Work classification.** Enter the appropriate work classification for each employee. *Note:* Only the work classifications listed on the applicable wage decision may be utilized. If the wage decision does not contain a work classification and wage rate that is needed for the project, the employer must request an additional classification and wage rate. (See 3-17, *Additional work classifications and wage rates.*)
- H. **More than one classification.** The division of hours worked in different classifications shall be accurately maintained and clearly reported. The employer may list the employee once for each classification, distributing the hours of work accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
- I. **Hours worked at other job sites.** The payroll reports should reflect ONLY hours worked at the covered site of work. If an employee performs work at job sites other than the covered project for which the report is prepared, those hours worked at other job sites should *not* be reported on the payroll report. In such cases, the employer should list the employee's name, work classification, hours worked, hourly rate of pay and gross earnings for the covered project *over* the gross earnings for *all* projects/work performed (e.g. \$528.00/\$816.00). Deductions and net pay should be reported based upon the employee's total earnings (for all projects) for the week.

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.

- 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

Chapter 6 (Reserved)

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.
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- 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.

Chapter 8 MAINTENANCE WAGE RATE, CONTRACT ADMINISTRATION, AND ENFORCEMENT FOR PHAs, TDHEs, and DHHL

- 8-1 **Introduction.** Maintenance wage rate decisions (MWD) are statutorily mandated and are administered and enforced similar to Davis-Bacon and Related Acts (DBRA) labor standards in HUD programs. Generally, the term MWD means prevailing maintenance wage rates determined or adopted by HUD.

Many of the requirements associated with maintenance wage rates are similarly in effect for DBRA contracts/projects. For example, both MWDs and DBRA require the payment of not less than the applicable prevailing wage rate for various classifications of work, both have certain recordkeeping requirements, and both require the payment of wage restitution where underpayments have occurred. To the extent applicable, Housing Entities should follow the guidance in Chapter 5, paragraphs 5-9 through 5-14 of this Handbook to correct discrepancies related to MWDs and other labor standards requirements.

This chapter *only* applies to:

1. The operation of low-income housing projects subject to the U.S. Housing Act of 1937, Section 12(a) as amended;
2. The operation of affordable housing under the Native American Housing Assistance and Self-Determination Act of 1996 as amended; and
3. The agencies administering such programs.

This chapter is divided into three sections:

- Section I concerns the administration and enforcement of prevailing maintenance wage rates determined or adopted by HUD for the operation of Public, Indian, and Hawaiian Home Lands housing covered by such rates.
- Section II covers contract administration.
- Section III covers basic enforcement procedures.

Section I: Maintenance Wage Rate Determinations

- 8-2 **Applicability of Maintenance Wage Rate Decisions (MWD).** HUD-determined or adopted prevailing maintenance wage rate decisions apply to the operation of certain Public, Indian, and Hawaiian Home Lands housing projects, as follows:
- A. **Low-income housing operated by Public Housing Agencies (PHA).** MWDs apply to PHA-operated low-income housing projects as defined by the U.S. Housing Act of 1937 as amended, pursuant to Section 12(a).
 - B. **Affordable housing operated by Indian tribes and/or Tribally Designated Housing Entities (TDHE).** MWDs apply to TDHE-operated affordable housing as defined by the Native American Housing and Self-Determination Act of 1996 as amended, pursuant to Section 104(b).
 - C. **Affordable housing operated by the Department of Hawaiian Home Lands (DHHL).** MWDs apply to DHHL-operated affordable housing as defined by the Native American Housing and Self-Determination Act of 1996 as amended, pursuant to Section 805(b).
- Note: For ease of reference, throughout the remainder of this chapter the term PHA is used to represent Public Housing Agencies, Indian Tribes/Tribally Designated Housing Entities, and the Department of Hawaiian Home Lands.*
- D. **Exceptions to MWD wage rates.**
 - 1. **Volunteers.** Bona fide volunteers are excluded from MWD coverage for PHA operations. (See Chapter 2, paragraph 2-8 *Volunteers* and Chapter 11, paragraph 11-31 *Volunteers* and HUD regulations at 24 CFR Part 70.)
 - 2. **Tribally determined wage rates.** Prevailing wage rates determined under tribal law or regulation that are applicable to the work or covered contract supersede HUD-determined or adopted MWDs. (See Appendix II-4 and ONAP Program Guidance 2003-04.)
- 8-3 **Issuance of maintenance wage decisions.** The HUD Labor Standards Specialist (LSS) shall issue MWDs every two years to each PHA operating covered housing within that LSS's jurisdiction. The MWD effective dates are based on the PHA's fiscal year. (See [DBLS Notice 2018-02](#))
- The LSS shall issue MWDs on form HUD-52158 and make every effort to ensure that the MWD is issued at least 30 days in advance of the beginning of the respective PHA's fiscal year.
- 8-4 **Use and effectiveness of maintenance wage decisions.** Unless otherwise specified by HUD, the determination shall be effective for a two-year period beginning the first day of the PHA's fiscal year, or for the duration of a collective bargaining agreement if shorter (see 8-6.C). For example, if a PHA's fiscal year starts on January 1, 2019, the MWD

issued by HUD will be effective starting January 1, 2019, and expire on December 31, 2020. During the effective period, PHAs may utilize the determination for all routine maintenance work activities without further review or approval from HUD. If the MWD is expired, it is void.

- 8-5 **Additional classifications.** The PHA may request an additional classification and wage rate, as necessary, for any class of maintenance laborer or mechanic that is not listed on the MWD and which is to be employed in the operation of the covered housing by the PHA, a contractor, or subcontractor. HUD will issue the appropriate additional classification(s) and wage rate(s) as an addendum to the original MWD. Unless otherwise specified, the additional classification(s) and wage rate(s) shall be effective, retroactively, to the date of the original MWD and shall expire with the original MWD, accordingly.
- 8-6 **Recommending a Wage Rate to HUD.** Each PHA should provide maintenance wage rate recommendations to HUD *at least* 60 days before the beginning of the PHA fiscal year in which the MWD will expire.

The PHA must base its maintenance wage rate recommendation on accurate, current, properly documented, and relevant wage payment data and/or other appropriate information, including collective bargaining agreements (CBAs) and memoranda of understanding (MOUs). The wage rate data may come from a single source or a combination of sources, including state database(s) of prevailing wages which include maintenance wages, prevailing wage surveys or other collection methods, and a state or locally determined prevailing maintenance wage schedule.

- A. **State or Local Wage Databases.** PHAs may reach out to state-level departments of labor or equivalent and universities for wage rate data. Wage rate data is often readily available online through the state or local website governing labor statistics.
- B. **Survey Method.** When a PHA determines that a survey is necessary, it should solicit data from both public and private sector employers that employ maintenance workers who substantially complete the same work as the PHA maintenance workers. The number of employers surveyed must be sufficiently representative to provide enough wage data for all maintenance positions to allow for an accurate analysis as to the wage rate for each position. ***Note:*** It is important to weigh the amount of effort required to complete the survey method against the number of positions and/or workers employed by the PHA. For example, in smaller PHAs with a limited workforce, an elaborate survey is neither required nor appropriate.

Where wage data is not available for certain classifications that are needed, judgment should be used to conform the work to the wage rates found to be prevailing for other classifications in the PHA's operating area.

HUD Forms for administering the survey method include:

- 4750 Maintenance Wage Rate Recommendation,
- 4751 Maintenance Wage Rate Survey, and
- 4752 Maintenance Wage Rate Survey - Summary Sheet

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- C. **Collective Bargaining Agreements (CBA) and Memoranda of Understanding (MOU).** For PHAs operating under a CBA or MOU, MWDs will need to be coordinated with the effective dates of the CBA or MOU. MWDs will be effective for the duration of the CBA or for two years, whichever is shorter, and can be updated in accordance with the CBA negotiation scheduled.
- D. **PHA Submission.** After the PHA develops its recommended wage rates for each maintenance classification, it then submits the recommendation to the LSS for review. This includes new or updated position descriptions and duties of each classification, a survey data summary, and other supporting documentation.
- E. **HUD Review of PHA Recommendation.** HUD will review the supporting documentation and recommended rates to ensure that they are supportable and consistent with the wage rate data provided by the PHA. When HUD completes its review, HUD will issue a form HUD-52158. If HUD determines an adjustment or correction is necessary, the LSS will discuss it first with the PHA.
- 8-7 **Appealing the MWD.** The PHA, or other interested party affected by the MWD, may challenge or dispute the MWD by submitting a request for reconsideration in writing to the Deputy Director within 30 calendar days of notice of the MWD. The request for reconsideration should include relevant evidence supporting the request. The Deputy Director will consider all applicable evidence in making its decision. If the interested party is not satisfied with the Deputy Director's decision, the PHA or other interested party affected by the MWD has a right to appeal to the National Director of DBLS. See Chapter 7, *Disputes, Appeals, and Sanctions* for more detail regarding appeals to the National Director of DBLS.
- 8-8 **Contract Work Hours and Safety Standards Act (CWHSSA).** Contracts for covered maintenance work in excess of \$100,000 are subject to the overtime provisions of the CWHSSA. Force account labor (i.e., maintenance workers employed directly by the PHA) are *not* covered by CWHSSA overtime provisions. (See Chapter 2, paragraph 2-2(B) for more information).
- 8-9 **Inapplicability of certain labor provisions associated with DBRA.** While the administration and enforcement of MWDs generally mirrors the same standards and expectations associated with DBRA requirements, there are certain DBRA provisions that are not applicable to MWD work and/or contracts. These differences are described below.
- A. **MWD wage payments/frequency of payments.** MWD wage payments must be made at the full amount of wages earned due free and clear and without subsequent deduction except as otherwise provided by law or regulation. MWD payments may be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A period may not be of any duration longer than semi-monthly.
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B. **Recordkeeping.** Employers (PHAs, contractors, and subcontractors) engaged in work subject to MWDs must make and maintain records containing information demonstrating compliance with the MWDs applicable to the work for no less than three years following the completion of the work. These records must contain at a minimum the following information for each laborer or mechanic employed:

1. Employee name, address and Social Security Number;
2. Correct work classification(s);
3. Hourly rate(s) of monetary wages paid;
4. Rate(s) of any bona fide fringe benefits provided;
5. Number of daily and weekly hours worked;
6. Gross wages earned;
7. All deductions taken; and
8. Actual net wages paid.

Such records (or copies thereof) must be made available for inspection by the authorized representatives of the PHA and/or HUD.

8-10 **Contracts for maintenance work or services.** This paragraph and the following paragraphs assume that MWD labor standards applicability has been determined for the covered contract(s) and that the correct MWD wage decision has been assigned.

Note: For maintenance contracts, HUD observes the \$2,000 threshold instituted for contracts subject to the Davis-Bacon and Related Acts.

A. **PHA responsibilities.** For each maintenance contract, the PHA shall:

1. Ensure that the current MWD and contract standards are incorporated into the contract provisions;
2. Ensure that no contract is awarded to any contractor or subcontractor, regardless of tier, that is debarred or otherwise ineligible to participate in federal program(s);
3. Provide technical support to the contractor and subcontractors concerning prevailing wage requirements;
4. Identify and process requests for additional classifications and wage rates, as needed;
5. Conduct on-site interviews with the maintenance laborers and mechanics employed by contractors and subcontractors and record on form HUD-11 or similar form;
6. Perform periodic “spot-check” reviews of contractor and subcontractor records, including comparison of on-site interview data against such records (refer to paragraph 8-11(B));
7. Notify the contractor, and any subcontractor involved, of any labor standards deficiencies and required corrective actions;
8. Receive and screen complaints or allegations of prevailing wage violations;
9. Ensure correction of labor standards deficiencies and/or violations;

10. Maintain records that document actions taken to correct labor standards deficiencies and/or violations (including any waivers granted);
11. Dispose of deposit/escrow accounts established for labor standards purposes; and
12. Establish and maintain full documentation of all labor standards administration and enforcement activities.

Section II – Contract Administration

- 8-11 **Contract wage decision and standards.** The bid solicitation, if any, and the resulting contract for covered maintenance work must contain the applicable MWD and form HUD-5370-C, as appropriate. These are often inserted in the bid/contract specifications.
- A. **Maintenance wage decision.** The wage decision lists the work classifications approved for the project and the minimum wage rates that must be paid to maintenance laborers and mechanics performing the work. A multi-year contract for maintenance work or services must incorporate any subsequent MWD which may be issued to the PHA during the life of the contract.
- B. **Labor standards contract clauses, required.** The labor standards contract clauses are required to be included in all contracts and subcontracts. These contract provisions define the responsibilities of the contractor and obligate the contractor to comply with the applicable labor requirements. Remedies for violations of the labor standards contract clauses include withholding payments due to the contractor to ensure the payment of wages and liquidated damages which may be found due. These contract clauses enable HUD and/or the PHA to enforce the federal labor standards applicable to the project/contract. The HUD-5370-C is available online at the Davis-Bacon and Labor Standards (DBLS) website at https://www.hud.gov/program_offices/bacon_and_labor_standards/olrform and at [HUDClips](#).
- C. **Acceptable methods of incorporation.** The applicable MWD and HUD-5370-C may be incorporated into bid solicitations (if any) and contracts by “hard-copy,” incorporation into other documents, or by reference. See 3-12I for additional guidance on acceptable incorporation methods.
- 8-12 **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 or programs. The labor standards clauses (i.e., HUD-5370-C) insert into the contract 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 PHA shall verify the eligibility of all prime contractors prior to contract award by reviewing the Exclusion Records available online at: www.sam.gov. The PHA shall make a record of the 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.
- 8-13 **Additional classifications and wage rates.** If the MWD does not include work classification(s) required for the execution of the contract work, the employer (contractor or subcontractor) may request an additional classification(s) and wage rate(s) through the PHA. Generally, additional classifications and wage rate requests are not approved for apprentices, trainees, helpers, or welders.
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Section III – Basic Enforcement

8-14 **Labor standards compliance monitoring.** Periodic monitoring is conducted to ensure all contractors and subcontractors are performing the contract work in accordance with the applicable labor standards provisions. The two key aspects of periodic monitoring include: (1) spot-check reviews of contractor and subcontractor records, and (2) on-site interviews with laborers and mechanics employed under the contract.

- A. **Spot-check reviews.** The PHA shall monitor the labor standards performance of each prime contractor and subcontractor, regardless of tier (collectively referred to as “employers”) by performing periodic spot-check reviews. Spot-check reviews shall consist of random examinations of the employers’ records to detect labor standards violations such as underpayments, non-approved work classifications, and failure to pay premium pay for overtime hours. The first spot-check review of employers may provide a pattern of satisfactory labor standards performance for which case the PHA may use as evidence to conduct subsequent reviews less frequently and/or less intensively.

The PHA must keep accurate records of all spot-check reviews which includes evidence of satisfactory labor standards performance (e.g., payroll records, HUD-11 interviews) in an organized format readily accessible for review by HUD. For spot-check reviews that are deemed unsatisfactory based on violation(s) of labor standards, the PHA must document the remedial action taken to clear the violations and the keep corresponding proof of correction (e.g., restitution payment records) in an organized format readily accessible by HUD.

- B. **On-site interviews (MWD).** The PHA is responsible for conducting on-site interviews with maintenance laborers and mechanics and recording the information gathered. PHAs should use HUD-11 to record interviews. PHAs are encouraged to use judgment in assessing when and with whom on-site interviews should be conducted during any site visit. Such interviews shall be conducted in a manner consistent with on-site interviews conducted on contracts/projects subject to DBRA requirements. See 5-9(C).
1. **Comparison to employer records.** Information collected during on-site interviews should be compared to the respective employer’s corresponding records. The result of the comparison, including any discrepancies, shall be noted. Any discrepancies revealed during the comparison must be brought to the employer’s attention and shall be resolved.
 2. **Targeted interviews.** Where spot-check reviews and/or the comparison of interview statements to employer records indicate that underpayments may exist, it is appropriate to target interviews to particular crafts or to the employees of certain employer(s).

3. **Questionnaires.** Questionnaires should be mailed to employees when the PHA has reason to doubt the accuracy of the employers' records and/or underpayments are suspected. These questionnaires are used to test the accuracy of the records and/or to obtain the employees' versions of their working conditions. The information gathered from questionnaires may be used to develop complaints and computations of underpayment. (See form HUD-4730).

8-15 **Compliance principles, common discrepancies, and corrections.** To the extent applicable, PHAs should follow the guidance in 5-9 through 5-14 to correct discrepancies related to maintenance prevailing wage and other labor standards requirements.

HUD forms cited in this section:

HUD-11 Record of Employee Interview

HUD-4730 Federal Labor Standards Questionnaire in English

HUD-4730 SP Federal Labor Standards Questionnaire in Spanish

HUD-4750 Maintenance Wage Rate Recommendation

HUD-4751 Maintenance Wage Rate Survey

HUD-4752 Maintenance Wage Rate Survey - Summary Sheet

HUD-52158 Maintenance Wage Rate Determination

HUD-5370-C General Conditions for Non-construction Contracts – Sections I and II

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.
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- 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

Chapter 10 REPORTS (Davis-Bacon and Related Acts)

10-1 **Introduction.** The U.S. Department of Labor (DOL) regulations at 29 CFR § 5.7 describe the four types of reports that HUD must submit to the Secretary of Labor:

- A. **Enforcement reports**, which cover wage underpayments by contractors and subcontractors. Note that enforcement reports concern only wage violations associated with projects or contracts subject to the labor standards provisions of the Davis-Bacon and Related Acts (DBRA).
- B. **Semi-annual enforcement reports**, which cover compliance and enforcement activities under the provisions of the Davis-Bacon and Related Acts in accordance with the Reorganization Plan No. 14 of 1950.
- C. **Additional information reports**, which cover contracting activity by contractors and subcontractors upon request by DOL.
- D. **Contract termination reports**, which cover contract terminations due to violations of labor standards provisions or other statutes.

10-2 **Enforcement reports.** Enforcement reports, as described at 29 CFR § 5.7(a), may or may not need to be submitted to DOL.

- A. **Reports Not Sent to DOL.** An enforcement report does not need to be submitted to DOL when the following parameters are met:
 - 1) Underpayments totaled less than \$1,000; **and**
 - 2) There is no reason to believe the violations were aggravated or willful; **and**
 - 3) Restitution has been effected and future compliance assured; **and**
 - 4) The investigation was not made at the request of DOL.

All four of these conditions must be met before determining that the report does not need to be sent to DOL. In all other situations, a report must be filed with DOL.

- B. **Reports Sent to DOL.** An enforcement report must be sent to DOL when the following parameters are met:
 - 1) Underpayments by a contractor or subcontractor total \$1,000 or more (**Note:** The \$1,000 threshold refers to the underpayments of a single employer to its *entire* workforce and not to individual employees.); **or**
 - 2) There *is reason to believe* that labor standards violations are aggravated or willful; **or**
 - 3) Restitution has not been effected and future compliance is not assured; **or**
 - 4) The investigation was made at the request of DOL.

If at least one of the conditions listed above is met, the report must be sent to DOL.

- C. **Submission protocols.** When enforcement reports are required to be submitted to DOL in accordance with Section 10-2 above, the enforcement report must be submitted to DOL through HUD. LCAs shall submit enforcement reports to the LSS for their jurisdiction. Reports received or prepared by the LSS shall be submitted to the Deputy Director. The Deputy Director shall submit the report directly to the DOL Regional Enforcement Coordinator and shall send a copy to DBLS Headquarters (HQLS) for its information.
- D. **Timing of the report.** Enforcement reports that require or request further action or review must be submitted to DOL within 60 days after the completion of the investigation. “Investigation” in this context includes all compliance monitoring, including routine payroll reviews, and all actions taken by the agency or contractor toward disposition of the case such as agreement to pay restitution, refusal to pay, and/or request for a hearing.

Therefore, the report should not be prepared until *after* final disposition is reached at the local level. It is not necessary to wait until all of the underpaid workers have received the restitution found due to prepare the report.

Where the report must be submitted to DOL through HQLS, the Deputy Director shall furnish the report to HQLS not later than 45 days after completion of the investigation. This allows adequate time for HQLS to complete its review and submit the report within the overall 60-day deadline.

- E. **Content of the report.** The amount of detail needed in the report and any supporting documentation is dependent on the report’s purpose. Each enforcement report must contain basic coverage information: project identification and location, the contractor and any subcontractors involved, the nature of the violations, the number of underpaid workers and the total amount calculated due, the disposition of the case, and schedule of the wages found due.

Reports that refer a request for further action (i.e. a hearing or debarment recommendation) must be detailed in narrative and must be accompanied by exhibits which, together, are sufficient to substantiate the violations and document the investigative actions of the agency.

- 10-3 **Semi-annual enforcement reports.** HUD is required to furnish to DOL semi-annual reports (SAR) concerning the volume of DBRA-covered activities and the compliance and enforcement of DBRA labor standards provisions in HUD programs. The reports are due to DOL by April 30 and October 31 of each calendar year and cover the periods of October 1 through March 31 and April 1 through September 30, respectively. (See DOL regulations at 29 CFR § 5.7(b) and All Agency Memorandum 189.) To prepare the SAR, HQLS collects data on internal projects from the labor standards information system (LSIS, currently LR2000) and collects data on LCA activities from each Deputy Director. The Deputy Director collects the information from the LCAs in their jurisdiction and compiles it for submission to HQLS. HQLS then submits a

consolidated report to DOL, which accepts electronic submittals in lieu of paper copies at SemiAnnualReport@DOL.gov.

- A. **HUD-administered projects.** SAR data relative to projects administered by HUD DBLS staff are recorded in and drawn from the LSIS. Deputy Directors must ensure that the SAR data in LSIS are correct and complete not later than six (6) federal workdays in advance of the due date to DOL. HQLS shall begin drawing the LSIS SARs on the 5th work day in advance of the due date to DOL.
 - B. **LCA-administered projects.** LCAs must maintain the data necessary for the SAR and submit the data to HUD on form HUD-4710. The LSS/Deputy Director collects the data (HUD-4710) during the first week of April and October from the LCAs in their jurisdiction. Deputy Directors shall compile the LCA data for their region and submit the compiled data to HQLS no later than six (6) working days in advance of the due date to DOL. The HUD-4710 and instructions are available online at [HUDDClips](#). The HUD-4710 is on-screen fillable and can be transmitted to HUD electronically.
- 10-4 **Additional information reports.** Upon request by DOL, HUD shall transmit a report that contains the information it has available with respect to contractor and subcontractor activities and the labor standards provisions referenced in this chapter.
- 10-5 **Contract termination reports.** Whenever a contract is terminated because of violations of DBRA labor standards provisions, a report must be promptly submitted to DOL. The report must include:
- 1. The name and address of the contractor or subcontractor whose contract has been terminated;
 - 2. The name and address of the contractor or subcontractor, if any, who will complete the work;
 - 3. The contract number and the amount; and
 - 4. A description of the work to be performed.

The agency (HUD or LCA) generating the report shall complete it within 30 days after the contract is terminated. LCAs shall submit contract termination reports to the LSS for their jurisdiction. All termination reports must be submitted to HQLS through the respective Deputy Director. (See also DOL regulations at 29 CFR § 5.7(d).)

Chapter 11 INTERPRETATIONS AND APPLICATIONS

- 11-1 **Introduction.** This chapter provides additional guidance involving interpretations related to the application, administration, and enforcement of federal prevailing wage requirements.

See also the U.S. Department of Labor's (DOL) *Field Operations Handbook*, specifically Chapter 15, which provides DOL's interpretations of statutory provisions pertaining to the Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA). It is available at <https://www.dol.gov/agencies/whd/field-operations-handbook>.

For ease in reference, in this chapter DBRA refers to Davis-Bacon requirements applicable via HUD Related Acts and maintenance wage rate decisions (MWD) refers to prevailing wage rates determined or adopted by HUD for covered maintenance work.

- 11-2 **Business owners.** A laborer or mechanic who owns at least a *bona fide* 20% equity interest in the enterprise in which employed, regardless of the type of business (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a *bona fide* exempt executive, meaning they are not subject to DBRA/MWD wage requirements.

A person with a 20% or greater interest in a business who is required to work long hours, makes no management decision, supervises no one, and has no authority over personnel, *does not* qualify for the executive exemption.

- 11-3 **Clean-up work.** Cleaning work performed *during* construction and as a condition precedent to the acceptance of the completed project is subject to DBRA. Examples include window washing, removal of debris and sweeping. In the absence of a specific classification and wage rate for cleaning on the applicable wage decision, or if a request for additional classification and wage rate is not approved by DOL, cleaners shall be classified as Laborers (general) and paid the associated rate on the applicable wage decision.

Cleaning performed *after* completion and acceptance of the construction work in preparation for occupancy and which is not performed under the contract for construction is not subject to DBRA.

- 11-4 **Contract award.** Where relevant for DBRA/MWD purposes, a contract shall be deemed awarded in accordance with the following guidelines:
- A. The date the contract is executed.
 - B. The date of the adoption of a resolution or ordinance authorizing the award.
- 11-5 **Convict labor.** Using convict/prison inmate labor on DBRA/MWD-covered work is not prohibited. However, there is no exemption from DBRA/MWD wage requirements for convict/prison inmate labor. Some exemptions from federal prevailing wage

requirements (DBRA/MWD) may be operable in certain cases. For example, some federally assisted projects may not meet a threshold for DBRA/MWD applicability. The convict/prison labor participants may qualify as exempt force account employees (see paragraph 11-11 *Force account labor* below) or as *bona fide* volunteers. (See also Labor Relations Letter LR-92-01.)

11-6 **Deductions for income taxes.** HUD does not enforce or attempt to provide advice regarding employer obligations to make deductions from employee earnings for income taxes. However, HUD may refer to the Internal Revenue Service or other responsible agency(ies) copies of certified payroll reports that show wages being paid in gross amounts (i.e., without tax deductions) for its review and action it deems appropriate.

11-7 **Demolition.** In most cases, demolition standing alone is not subject to DBRA *unless* it will be followed by DBRA-covered construction work. This remains true whether the demolition is financed or assisted with HUD program funds or with other (non-HUD) funding. There are very few exceptions. (See also Labor Relations Letter LR-09-01.)

A. **DBRA-covered demolition work when the character of the follow-on construction is known.** When demolition is covered by DBRA, it is considered “site preparation” and takes on the character of the construction work that will follow. Some examples include:

1. The demolition of a 16-story apartment building that will be followed by the construction of 2-story townhomes is residential construction and subject to a residential wage decision.
2. The demolition of a 4-story apartment building that will be followed by the construction of a community center is building construction subject to a building wage decision.
3. The demolition of an office building that will be followed by the construction of a parking lot is highway construction subject to a highway wage decision.

B. **DBRA-covered demolition work when the character of the follow-on construction is *not* known.** In some circumstances, it may be known that the demolition will be followed by DBRA-covered construction work, but the character of the follow-on construction is not known at the time the demolition will be performed. For example, it is unknown at demolition whether the follow-on construction will involve residential construction (e.g., low-rise apartment buildings of four stories or less) or building construction (e.g., a high-rise apartment building of five or more stories). In such cases, a heavy wage decision applies.

C. **Inapplicability of MWD rates.** Demolition is not considered maintenance. Therefore, MWD rates do not apply to demolition in any circumstance.

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- 11-8 **Employee status.** Every person performing the work of a laborer or mechanic in construction or maintenance work covered under DBRA/MWD wage standards is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person. This status, as defined here, is pertinent for prevailing wage purposes *only*. This status regarding Federal prevailing wage requirements does not imply any other obligation on the part of the associated “employer”.
- 11-9 **Excluded professions.** Employees performing work that is primarily executive, professional, managerial, supervisory, or clerical in nature are not “laborers and mechanics” for the purposes of DBRA/MWD prevailing wage requirements. (See also paragraph 11-14, *Laborers and Mechanics*.)
- 11-10 **FHA Section 212(a) – Off-site work and DBRA Applicability.** Under Section 212(a) of the National Housing Act, both the location and the timing of the work affect the applicability of Davis-Bacon wages to FHA-insured projects. Off-site work, which is construction work outside the boundaries of the property that is secured by the mortgage being insured, does not typically require Davis-Bacon wages. Work that is done on the secured property requires Davis-Bacon wages regardless of whether the work is financed through the FHA-insured mortgage or is paid from sources outside the mortgage. However, work prior to application for FHA insurance (or pre-application in the case of Early Starts) would not typically require Davis-Bacon wages. This would include demolition or remediation done prior to application or pre-application. Where the MAP Guide is applicable, the application for insurance is considered filed for Davis-Bacon purposes once a Multifamily Accelerated Processing (MAP)-approved lender has submitted all documents required by the MAP Guide to HUD.
- 11-11 **Force account labor.** In some instances, a government agency (state or political subdivision thereof) may perform DBRA-covered construction work with its own employees. These governmental employees are referred to as “force account” labor. Force account workers are excluded from DBRA coverage. This exclusion stems from the language of most DBRA statutes such that the covered classes of workers are those employed by “contractors and subcontractors” and the concept that governmental agencies are not considered “contractors” or subcontractors” within the meaning of these DBRA statutes.
- A. **Non-force account labor.** Any portion of the DBRA-covered work that is not performed with excluded force account labor is subject to DBRA and other labor standards in the usual manner.
- B. **Non-excluded force account labor.** Certain HUD related acts (i.e., U.S. Housing Act of 1937, Native American Housing Assistance and Self-determination Act of 1996) require the payment of prevailing wages to *all* laborers and mechanics without stipulation that such laborers and mechanics are employed by contractors and subcontractors. Under these statutes, the governmental agency employees must be paid in accordance with the applicable DBRA/MWD requirements.
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- 11-12 **Fringe benefits.** An employer may take credit for contributions made for bona fide fringe benefits regardless of whether any fringe benefits are included on the applicable DBRA/MWD wage decision. Employees who are excluded from a fringe benefit plan(s) for any reason, or for whom the cash wages paid and contributions fail to meet the total of the applicable prevailing wage, must receive any difference in cash wages. Employers must make contributions to fringe benefits plans on a regular basis, i.e., at least quarterly.
- A. **Conventional fringe benefit plans.** Conventional plans are ordinarily those that are common to the construction industry and which are paid directly to the employees in cash or into a fund, plan or program (*aka* “funded” plans). Employers may take credit for contributions made under such conventional plans without requesting the approval of DOL under 29 CFR § 5.5(a)(1)(iv).
- B. **Unconventional fringe benefit plans.** Where a fringe benefit is not of the conventional type described in the preceding paragraph (A) (e.g., unfunded plans), DOL must determine whether the fringe benefit is bona fide for DBRA purposes (29 CFR § 5.5(a)(1)(iv)); similarly, HUD must determine whether the fringe benefit is bona fide for MWD purposes. Employers must produce evidence of such “bona fide” determination in order to take credit for unconventional fringe benefits against the applicable DBRA/MWD wage rate.
- 11-13 **Helpers.** The term helper is defined for DBRA purposes at 29 CFR § 5.2(n)(4). Helpers are permitted on a DBRA or MWD contract only if the helper classifications are specified in the applicable DBRA or MWD wage decision or additional classifications and wage rates are approved by DOL (DBRA) or HUD (MWD).
- 11-14 **Laborers and mechanics.** The terms “laborer” and “mechanic” generally include workers whose duties are manual or physical in nature as distinguished from mental or managerial, and include apprentices, trainees, and helpers. These terms *do not* apply to workers whose duties are primarily administrative, executive, professional, or clerical, rather than manual. Generally, “*mechanics*” are considered to include any worker who uses tools, or who is performing the work of a trade. All laborers and mechanics must be paid the applicable DBRA/MWD wage rate *regardless of any contractual relationship which may be alleged to exist*.
- 11-15 **Material suppliers.** The manufacturing and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete, when accomplished by a bona fide material supplier operating facilities serving the public in general, are not subject to DBRA/MWD requirements.
- 11-16 **Multiple work classifications.** Employees who perform work in more than one work classification may be paid no less than the applicable prevailing wage rate for actual hours worked in each classification, *provided* that the work performed is capable of separation into more than one classification and that time records are maintained to accurately reflect the actual hours worked in each classification involved. Tasks which are normally performed as part of the fundamental trade classification are not separable.

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- 11-17 **Owner-operators of power equipment.** Owner-operators of power equipment will often enter into contracts for services at an hourly rate including both “man and machine”. These hourly rates will include items over and above labor, such as equipment maintenance, fuel, liability, etc. Due to the difficulty of ascribing costs to non-labor costs vs labor costs, HUD and its program clients may accept a combined “man and machine” hourly rate on the responsible employer’s certified payroll *provided* that the combined hourly rate may not be less than the applicable wage rate for the operator of the respective power equipment.
- 11-18 **Owner-operators of trucks and other hauling equipment.** DOL administrative policy holds that DBRA and CWHSSA are not applied to bona fide owner-operators of trucks who are independent contractors. For the purposes of these Acts, certified payrolls do not need to include hours worked or wage rates paid, only the name and work classification “Truck Driver - owner-operator”. This policy does *not* pertain to owner-operators of power equipment such as bulldozers, backhoes, cranes, drilling rigs, etc.
- 11-19 **Payroll certification.** For the purposes of DBRA payrolls, only an officer of the business or a person authorized in writing by an officer of the business may certify required weekly payroll reports. Signatures must be in ink. Signatures other than in ink, e.g., in pencil, by signature stamp, copies, and facsimiles, are not acceptable. (See Labor Relations Letter 96-01.)
- A. **Owners of businesses working with their crew.** HUD permits owners of businesses working on the same job site with their crew to certify to the payment of their own prevailing wages in conjunction with the owner’s certification that all of their employees have likewise received no less than the applicable prevailing wages. In such cases, the payrolls need only to include the owner’s name, work classification (including the designation as “owner”), and the daily and total weekly hours worked. The rate(s) of pay or amount(s) earned are not required for such owners.
- B. **Owners of businesses that do not work with a crew.** HUD does not permit non-exempt owners of businesses who work alone (e.g., self-employed subcontractors, sole proprietors) to certify to the payment of their own wages. Such owners must be carried on the certified payroll report of the responsible employer, i.e., the entity under whose auspices the person(s) is engaged on the covered work.
- 11-20 **Piece rate/piece work employees.** Employees whose earnings are calculated by the amount of work produced (rather than hours worked) must receive no less than the applicable DBRA/MWD wage rate based upon the hours of work performed. The employer must divide the piece rate earnings by the actual hours worked to determine the “effective” hourly rate. The effective hourly rate must be calculated for each week’s earnings and must be no less than the applicable prevailing wage rate. It does not matter whether the effective hourly rate changes from week to week as long as the result is at least as much as the prevailing wage rate. If the effective hourly rate is less than the applicable prevailing wage rate, the employee must be compensated at the prevailing wage rate for all
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hours worked.

- 11-21 **Proper work classification.** Questions on the proper classification for laborers or mechanics performing various types of work are resolved based on area practice. It is immaterial whether the contractor or subcontractor is union or non-union; however, it is relevant whether the prevailing wage rate(s) on the applicable wage decision for the classification(s) in question are based on union agreements or are based on open shop (non-union) wage data.
- A. **Prevailing wage rates based on union agreements.** If the prevailing wage rates for the classifications in question are based on union agreements, the prevailing practice concerning work performed in those classifications is that practice observed by contractors and subcontractors signatory to the agreements. Therefore, unless there is a jurisdictional dispute between the craft unions, the duties ascribed to any job classification will be the same as those outlined in the appropriate collective bargaining agreements. If the collective bargaining agreements are silent on the issue, the local unions involved must be consulted.
- B. **Prevailing wage rates based on open shop data.** In areas where the prevailing wage rates on the applicable wage decision are based on open shop data, the prevailing practices of open shop contractors in the area are deemed to be area practice.
- 11-22 **Relatives.** There are no exceptions made in the enforcement of DBRA/MWD on the basis of family relationship for relatives performing the work of laborers or mechanics. Such relatives must be paid no less than the prevailing wages applicable to the type of work performed and must be included on associated payroll records.
- 11-23 **Repair employees.** An employee of an equipment rental dealer or other company that performs repair work on-site is subject to DBRA/MWD if the employee performs more than an incidental amount of work on site.
- 11-24 **Site of the work.** The site of the work is limited to the physical place or places where the construction called for in the contract/scope of work will remain when the work has been completed *and* any other site where a significant portion of the building or work is constructed, provided that such site(s) is established specifically for the performance of the contract or project. (See also *DOL Field Operations Handbook, 15b04.*) For FHA projects, off-site is defined in paragraph 11-10.
- A. **Dedicated support locations.** Batch plants, borrow pits, job headquarters, tool yards, fabrication facilities, etc., are part of the “site of the work” provided they are dedicated *exclusively* or nearly so to the contract/project, and are *adjacent or virtually adjacent* to the site of the work.
- B. **Established support locations.** Excluded from the site of the work are established support locations such as permanent offices, branch plants, fabrication plants, tool

yards, etc., of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular project/contract. Also excluded are similar locations of a commercial or material supplier established in the proximity of, but not on, the active site work prior to the opening of bids, even if dedicated exclusively to the covered project for a period of time.

- C. **Maintenance (MWD) work.** Site of the work is generally not subject to interpretation as it pertains to maintenance work subject to MWD because maintenance work is designed to sustain physical elements already on-site.
- 11-25 **Start of construction/work.** Start of construction or work, as those terms are used with labor standards/prevaling wage requirements, means the beginning of initial site clearance and/or other preparation provided that those activities are pursued diligently and are followed with minimal delay by other construction/work activity.
- 11-26 **Final Closing and Warranty Work.** Final closing is defined as all work is complete, the final Trip Report (form HUD-95379) at 100% construction is completed, and the final payout from the FHA loan has occurred. In situations where work needs to occur under a warranty and the last disbursement has not occurred, the work is covered under Davis-Bacon. Otherwise, it is considered repair and does not meet the DOL definition of purpose, time, and place, as per AAM 130.
- 11-27 **Statute of limitations.** There is no statute of limitations relative to administrative actions correcting violations of DBRA/MWD labor standards provisions.
- A. **Portal to Portal Act.** The Portal to Portal Act (PA) applies to the Davis-Bacon Act. It prevents the commencement of any court suit for unpaid straight-time wages more than two years after the performance of the work (three years in the case of willful violations), where such actions are judicially determined to be permissible under the law.
- The PA does not apply to federally assisted projects (i.e., the Related Acts) in which DBRA wage rates are required to be paid. State statutes of limitations apply to such project or projects in private actions where they are judicially determined to be permissible under the law. The federal six-year statute of limitations applies in government enforcement actions (28 USC § 2415(a)).
- B. **Corrective administrative actions.** Administrative actions to correct violations of the DBRA/MWD, including actions initiated through the Administrative Law Judge hearing procedures, are not subject to time limits.
- 11-28 **Summer youth employment.** Youth (ages 16 to 22 years old) who are bona fide students and part of a bona fide youth opportunity program may be employed on DBRA/MWD projects on a temporary basis during the summer months and may be paid less than the applicable prevailing wage rate. Such employment must be in accordance with statutory age and minimum wage requirements. The provisions of the program, including the rates

of pay, must be documented in writing. (See also *DOL All Agency Memoranda Nos. 71 and 96.*)

- A. **Bona fide youth opportunity program.** A bona fide youth opportunity program is that which is sponsored by, for example, union and management or a governmental or community group. Sponsorship by an individual employer for only one particular project would not qualify as a bona fide program.
 - B. **Supervision.** Competent supervision must be provided to all youth employed on the project. Supervisors must hold journeyman status in their respective trade. The ratio of youth to designated supervisors should be no greater than four to one.
 - C. **Reporting.** A copy of the program provisions must be provided to the LSS assigned to the jurisdiction involved, and to the DOL Wage and Hour Administrator.
- 11-29 **Supply and installation contracts.** Installation work performed in conjunction with an equipment supply contract is subject to DBRA wage requirements where it involves more than an incidental amount of construction activity. Whether installation work involves more than an incidental amount of construction activity depends on the specific circumstances of each case. Factors requiring consideration include the nature of the prime contract work; the type of work performed by the employees installing the equipment (e.g., the techniques, materials and equipment used and the skills required for its performance); the extent to which structural modifications to buildings are needed to accommodate the equipment (e.g., widening entrances, relocating walls, installing wiring); the cost of the installation work, either in terms of absolute amount or in relation to the cost of the equipment and the total project cost.
- 11-30 **Transportation, lodging, and board expenses.** An employer that chooses to provide or compensate its employees for transportation, lodging or board expenses may not take credit for such expenses against the applicable DBRA/MWD prevailing wage rates.
- 11-31 **Truck drivers.** DBRA applicability to truck drivers is based on the definitions of “construction, prosecution, completion, or repair” and “site of the work” at 29 CFR § 5.2.
- A. **Truck drivers covered by DBRA:**
 - 1. Employees of a contractor or subcontractor for time spent working on the site of the work.
 - 2. Employees of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not *de minimis* (see B(3), below).
 - 3. Drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.
 - 4. Drivers transporting a portion(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the

physical place(s) where the building or work called for in the contract/project will remain.

B. Truck drivers *not* covered by DBRA:

1. Material delivery truck drivers while off “the site of the work”.
2. Employees of a contractor or subcontractor traveling between a DBRA-covered job site and a commercial supply facility while they are off the “site of the work”.
3. Drivers whose time spent on the site of the work is *de minimis*, such as only a few minutes at a time to merely pick up or drop off materials or supplies.

11-32 **Volunteers.** Bona fide volunteers (defined for HUD programs at 24 CFR Part 70) are excluded from DBRA/MWD coverage. Such volunteers may receive payments for expenses or other nominal benefits or fees without losing “volunteer” status. Such payments, etc., cannot be tied to productivity, hours worked, or in any way be construed as wages. (See also 2-8, *Volunteers.*)

11-33 **Working foremen/supervisors.** Supervisory employees who spend 20% or more of their time performing the work of a laborer or mechanic in a workweek, must be paid no less than the applicable DBRA/MWD rate for the classification of work performed for all hours engaged in such work as a laborer or mechanic.

11-34 **Working subcontractors.** All persons performing the work of a laborer or mechanic, except *bona fide* business owners (described at 11-2), must be paid no less than the applicable DBRA/MWD wage rate for the type of work they perform. (See also 11-19, *Payroll certification*, and *Labor Relations Letter LR-96-01.*)

11-35 **YouthBuild.** The YouthBuild program is administered by the DOL. The YouthBuild Transfer Act authorizes DOL to provide grants for job training and educational activities for at-risk youths. YouthBuild participants receive a combination of classroom training, job skills development, and on-site training in the construction trades. Although the construction and rehabilitation of affordable housing is a major component of the YouthBuild training program, the focus is to prepare at-risk youth for employment. National training standards have been approved by DOL for local YouthBuild chapters. Local chapters may adopt these approved standards for their training programs. YouthBuild participants that are registered under such approved standards may be paid less than the journeyman’s wage as provided by the standards. YouthBuild participants that are not registered under such approved and adopted standards must be paid at least the journeyman’s wage on projects covered by Davis-Bacon wage requirements.

Chapter 12 MONITORING STATE AND LOCAL CONTRACTING AGENCIES

- 12-1 **Introduction.** The purpose of this chapter is to establish requirements and methods to be used by HUD Labor Standards Specialists/Staff (LSS) to monitor state, local, and tribal contracting agencies (collectively known as “LCAs”) in order to assess their capacity and effectiveness in the administration and enforcement of Federal labor standards.

Monitoring conducted by the Office of Davis-Bacon and Labor Standards (DBLS) is a critical part of the Department’s management control system to ensure that HUD programs are administered in compliance with applicable laws, regulations and other directives. This chapter provides information about the DBLS monitoring process to ensure national consistency. While this information is primarily for the LSS, LCAs may benefit from understanding the DBLS process.

This chapter is subdivided into three sections:

- Section I covers the foundations of monitoring
- Section II covers the management of monitoring activities and results
- Section III covers using the monitoring review guides

In addition, this chapter draws heavily from the *HUD Monitoring Desk Guide*. It may be of value to read this guide in combination with this chapter.

Section I – Foundations of Monitoring

12-2 **Primary concepts and components.**

- A. **Proactive role of the LSS.** The LSS is expected to be proactive in assisting LCAs with performance and compliance issues. HUD advocates a cooperative problem-solving approach as the ideal model for enhancing LCA capacity and performance. The emphasis of this approach is on preventing, detecting, and correcting labor-related compliance issues in order to improve the LCA's performance.

The LSS is expected to assess the LCA's performance and capacity to perform labor-related compliance functions. The LSS should provide recommendations in accordance with laws, regulations, and other directives for resolving any issues related to LCA performance and capacity.

- B. **Risk assessment.** DBLS utilizes an objective risk assessment model to identify the LCAs that require monitoring and determine whether an on-site review or a remote monitoring is necessary. LCAs determined to be of higher risk are the focus of DBLS' increased oversight and technical assistance. Both Hub Directors and Deputy Directors have discretionary authority to consider other factors to determine the risk level such as: local operating conditions, program office recommendation(s), and other circumstances pertinent to the LCAs within the jurisdictions that the Deputy Directors oversees. See Section II, paragraph 12-8 for information about the Risk Analysis Worksheet.
- C. **On-site reviews.** An on-site review should occur only after the LSS has notified the LCA of the on-site review in writing. The on-site review will consist of: (1) an entrance meeting between the LCA staff and the LSS, (2) an audit of the LCA's files, (3) a review of the LCA's internal controls and processes related to labor standards compliance, and (4) identification of any labor-related compliance issues. The on-site review will conclude with an exit meeting between the LCA staff and the LSS. A formal, written report of the on-site review will be provided to the LCA and the program office (e.g., CPD, PIH, etc.). The report will include detailed results of the on-site review including any remedial actions to be completed by the LCA to become compliant with DBLS' performance and compliance standards.
- D. **Remote monitoring.** Remote monitoring is an acceptable method by which the LSS may monitor LCA performance and compliance. Remote monitoring has the same requirements for planning, examination, and communication as on-site monitoring. While remote monitoring generally includes access to fewer records than on-site monitoring, remote monitoring may be expanded to include additional records review in order for the LSS to gain sufficient information about the LCA's operations. A formal, written report of the remote monitoring must be provided to the LCA and the program office (e.g., CPD, PIH, etc.). The report must include detailed results of the monitoring, including any remedial actions to be completed by the LCA to become compliant with DBLS' performance and compliance standards.

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- E. **Cooperative problem solving.** All monitoring will involve a review and assessment of the LCA's files, processes, and procedures. The LSS will assist the LCA with identification and analysis of any labor compliance issues and decide as to the type and extent of assistance the LCA may require. The LSS is expected to work with the LCA to develop strategies and approaches to resolve problems and enhance the LCA's capacity to successfully administer and enforce Federal labor standards.
- F. **Referral to HUD program office.** The LSS is expected to develop constructive relationships with LCAs. In matters where the LCA takes actions that the LSS determines are egregious (e.g., repeatedly ignores LSS directives, violates laws and regulations, refuses to cooperate), the LSS may recommend sanctions against the LCA. Sanctions may only be applied by the HUD program office and therefore the LSS is *required* to consult with the Deputy Director and HQLS prior to any recommendation to the Program Office Director with jurisdiction over the LCA. Sanctions may include withholding funds, debarment, etc.
- G. **Risk assessment and review guides.** HQLS developed guides for DBLS staff to use in order to carry out various monitoring activities. An inventory of the guides is provided in paragraph 12-31. The guides with the form numbers HUD-4741, HUD-4742, and HUD-4743 are available on the [DBLS website](#) under Davis-Bacon and Labor Standards Forms and on [HUDClips](#).
- 12-3 **Applicability and legal authority.** This Handbook applies to the LCAs that administer the programs listed in Appendix II-4. The legal authority for the administration and enforcement of labor standards is also listed in Appendix II-4.
- 12-4 **Compliance with laws and regulations of other agencies.** HUD does not monitor compliance with state, local, or tribal laws and regulations, or laws and regulations administered by other Federal agencies. However, if the LSS believes that an LCA is not observing such laws or regulations, the LSS may refer the matter to the Deputy Director. The Deputy Director may refer any such issue to the appropriate agency for its attention.
- 12-5 **DBLS labor standards information system.** The LSS must use the Labor Standards Information System (LSIS) to record all monitoring activities. **Note:** All references to the LSIS relates to the current program/software/system instituted by HUD to manage labor compliance activity.
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Section II - Management of Monitoring Activities and Results

- 12-6 **Focus of monitoring.** The Risk Analysis Worksheet must be utilized to ascertain whether an LCA will be the focus of an on-site monitoring or a remote monitoring. The LSS should not engage in re-reviewing the work performed by LCAs. Rather, the LSS should focus on the LCA's systems, procedures and processes, and the outcomes of those systems.
- 12-7 **Development of annual monitoring strategy.** At the beginning of each fiscal year, the Deputy Director shall develop and submit to the Hub Director an annual monitoring strategy consistent with HQLS guidance and national operating objectives. The purpose of this strategy is to establish a framework for determining the appropriate level of monitoring attention for each agency consistent with available resources. The annual monitoring strategy is subject to operating conditions such as travel allowances and the HQLS budget.
- 12-8 **Risk Analysis Worksheet.** The Risk Analysis Worksheet is the tool that DBLS uses to analyze individual agencies, establish objective priorities for monitoring, and determine where resources can be best utilized. The worksheet is intended to help the LSS identify which LCAs to monitor, which program areas or activities to cover, and the depth of the review.

In developing an annual monitoring strategy, the Deputy Director must consider the basic factors identified at paragraph 12-13 to complete their ranking.

The respective DBLS Hub shall retain in its official files the Risk Analysis Worksheet and annual monitoring strategy for five (5) years following the end of the fiscal year for which they were prepared. The *DBLS Risk Assessment Desk Aid* is available to assist the LSS and Deputy Director in completing the Risk Analysis Worksheet.

- 12-9 **Selection of LCAs to be monitored.** Agencies are selected for monitoring within each program and technical area using indicators grouped under five general risk factors: (1) recent monitoring, (2) program complexity, (3) local capacity, (4) HUD program office ratings, and (5) recent problems revealed through audits, investigations and/or complaints.
- 12-10 **Selection of program areas/functions to review.** The LSS conducts an analysis to identify the program areas/functions and activities for review and the depth of the review. In some cases, factors resulting in selecting an LCA for monitoring might also pinpoint areas for focus in the review. For example, an LCA with recurring monitoring findings in maintenance wage administration should again be reviewed in that area.

When staff limitations and/or the size of the program(s) preclude monitoring all functions and activities, the LSS should select representative activities or functions. LCA performance should be analyzed in sufficient depth to produce a report that is credible and useful to both HUD and the LCA.

In the case of LCAs with significant contract activity (i.e., over \$20 million or as determined at the LSS's or Deputy Director's discretion) or agencies with multiple operating divisions administering labor standards requirements, the monitoring may need to be limited to one or two broad functions or operating divisions that can be reviewed in sufficient depth, rather than reviewing more functions or divisions in less detail.

- 12-11 **High risk activities.** DBLS considers certain types of activities as high risk, which the LSS or Deputy Director should select as appropriate for monitoring. Examples include:
- A. Economic development projects (particularly those administered by subrecipients or separate divisions/operations of the LCA).
 - B. Construction/rehabilitation activities that include permanent or takeout financing should be reviewed for compliance with the requirements/wage decision in effect at the time the work began.
 - C. Large contracts or purchase orders issued for maintenance and operation of housing developments of Public Housing Agencies (PHAs), Indian Housing Agencies (IHAs), Tribally Designated Housing Entities (TDHEs), and the Department of Hawaiian Homelands (DHHL).
 - D. Multiple activities operated simultaneously by subrecipients should be reviewed to determine LCA oversight and management as well as subrecipient compliance with applicable laws, rules, handbooks and policies.
 - E. LCAs determined "troubled" by HUD's Office of Public and Indian Housing (PIH) or equivalent status by another HUD program office.
 - F. LCAs receiving increased funding.
 - G. LCAs receiving funding from new HUD-funding sources for which LCA staff may be inexperienced or understaffed to manage labor compliance.
- 12-12 **Intensity of review.** The depth and thoroughness of the review will be dictated by: (1) the degree of involvement of the LCA in high-risk activities, (2) past monitoring history, and/or (3) past performance. LCAs with large, complicated programs or large numbers of high-risk activities may warrant more in-depth monitoring. LCAs that have not been monitored in-depth recently or whose capacity has been weakened due to staff turnover in key positions may also be candidates for more in-depth reviews. In-depth reviews may require extra time and more detailed review of one or more program areas. These reviews may also require more than one visit to the LCA or for the LCA to provide additional submissions to the LSS as requested.
- Where the LSS believes the LCA has corrected past deficiencies, has an acceptable level of performance, or has minor involvement in high-risk activities, a less comprehensive review may be appropriate.
- 12-13 **Implementation.** The Risk Analysis model, as described in the DBLS *Risk Assessment Desk Aid*, prescribes a range of numerical scores for high, medium, or low risk. Deputy Directors may develop benchmarks for scores as appropriate within these ranges. For very large LCAs, projects or activities may be individually classified or ranked to determine areas of focus for a review more clearly.

The Risk Analysis model includes:

- A. **Use of existing data.** In developing an annual monitoring strategy, the LSS should consider existing reports of LCA activities and funding in collaboration with HUD program office recommendations when selecting LCAs and their activities to be monitored. Examples of existing reports of data include:
1. Semi-Annual Enforcement Reports (SAR)
 2. Consolidated Annual Performance Evaluations Reports (CAPERS)
 3. Integrated Disbursement and Information System (IDIS) activity reports
 4. Annual investment strategies, etc.
 5. FHA multifamily production reports (for risk sharing projects)
 6. PHA PIC System
 7. Integrated Real Estate Management System (IREMS) reports

Where significant issues have been raised, on-site monitoring should be proposed so that HUD can identify and advise the LCA of problem situations before they develop into more serious issues.

- B. **Focus on high-risk areas.** The monitoring review should concentrate on those factors for which the LCA or the activity received its high-risk rating. The quality of monitoring should not be sacrificed in order to monitor greater numbers of LCAs or more program areas/activities.
- C. **Rank order of LCAs.** LCAs shall be ranked by risk score. The LSS uses this ranking to determine which LCAs should be monitored and the type of reviews that will be performed (e.g., on-site monitoring or remote monitoring).
- D. **Risk Analysis Worksheet.** The LSS converts the risk assessment factors found in the Risk Assessment Desk Aid (Desk Aid) into a numerical score. The Desk Aid prescribes a range of numerical scores for high, medium, or low risk. The Deputy Director may develop benchmarks for scores as appropriate within these ranges. For very large LCAs, projects or activities may be individually classified or ranked to more clearly determine areas of focus.

The LSS is responsible for providing a numerical score for each factor by utilizing the Risk Analysis Worksheet and Desk Aid. The total risk assessment score is calculated after scores for all five factors have been entered. The LSS will rank each LCA's risk from highest score to lowest score based on the risk assessment.

The LSS will utilize the five basic factors to analyze the risk of the agency, plus any other locally developed specific indicators which have been approved by HQLS.

Once the Risk Analysis Worksheet is updated, the LSS will identify the top 20 LCAs and submit the assessment to the Deputy Director for review and approval. Upon approval, the Deputy Director will inform the LSS which LCAs to monitor on-site and those that will be done remotely. Deviations from the risk analysis schedule may be made with proper justifications.

For example, if it is determined that a high-risk LCA will require travel to complete an on-site review that is also located near another agency that may be mid-risk, it may be cost effective for the Deputy Director to include the LCA with a lower score to have an on-site monitoring as well in order to maximize efficient and impactful use of travel funds and staff time. This deviation is acceptable if the selection to do so is noted on the Risk Analysis Worksheet.

The risk assessment is due before the end of the current fiscal year to allow the Deputy Director time to develop an annual monitoring strategy for the upcoming fiscal year, unless HQLS' operating instructions specify otherwise. If HUD program offices do not have data available until after the beginning of the following fiscal year, the LSS should use the most current data available at the time the LSS conducts the risk analysis for the LCA. Upon completing the risk assessment, the Deputy Director will send the final plan to the Hub Director, who will submit a comprehensive Hub plan to HQLS for planning and budgeting purposes.

Note: The Deputy Director shall make every effort to make travel as fiscally and time efficient as possible. When the Deputy Director is reviewing the risk assessment, on-site monitoring, technical assistance, outreach, and employee training should be combined where possible.

- E. **Documentation.** DBLS Hubs should retain the annual risk assessment documentation and monitoring strategy for five (5) years. These documents are the record of the Hub's recommendation of LCA/projects selected for on-site review, remote review, or technical assistance. After five (5) years, the records disposal process should be followed. **Note:** Legal holds and other such requirements for retention may extend the length of time for the region to maintain the files.

12-14 **Timing of monitoring.** To the extent possible, the LSS schedules monitoring, especially on-site visits, in consultation with the LCA in order to minimize disruption in the operations of the LCA. Generally, monitoring should be scheduled either at (1) the same time as a program office or other support function (e.g., FHEO, Environment) review is being conducted, or (2) at a time well separated from those reviews.

12-15 **Annual monitoring schedule.** As part of the annual monitoring strategy, the Deputy Director shall distribute an approved monitoring schedule for the fiscal year to the offices listed at paragraph 12-15(D). This schedule covers all HUD programs based on the criteria for selection of LCAs in this handbook and other HQLS guidance.

The annual monitoring schedule identifies the LCAs to be monitored: 1) within a specific quarter, 2) whether monitoring is on-site or remote, 3) for each program office, and 4) the function(s)/area(s) to be monitored.

- A. **Developing a monitoring schedule.** The monitoring schedule should be viewed in the context of balancing anticipated field office workload and the availability of staff and travel resources. Where possible, travel should serve multiple purposes, e.g., monitoring more than one LCA in the same geographical area on the same trip,

provision of technical assistance.

DBLS staff should not plan on reviewing lower risk projects or functional areas for an LCA except where time remains from a planned on-site visit. Monitoring lower risk LCAs may be useful in validating risk scoring, as well as identifying risk factors not previously considered.

- B. **Schedule updates.** The annual monitoring schedule should be updated at the beginning of each quarter of the fiscal year. Additional updates should also be made upon issuance of HQLS guidance requiring an alteration of the schedule or upon changes in field operations policies or conditions.
- C. **Coordination.** The annual monitoring schedule should be coordinated as follows:
 - 1. The LSS is responsible for consulting with appropriate personnel in the field office concerning their monitoring schedules for LCAs and for considering their recommendations for scheduling monitoring; and
 - 2. The LSS should also contact LCAs where reviews by more than one HUD program office or discipline are proposed to determine whether the LCA favors a series of individual reviews (e.g., DBLS on-site monitoring then CPD monitoring) or a consolidated HUD-team review (e.g., PIH and DBLS are scheduled to complete an on-site monitoring at the LCA at the same time).
- D. **Distribution of the annual monitoring schedule.** Within thirty (30) days following the beginning of the fiscal year, unless HQLS' operating instructions specify otherwise, the Deputy Director shall communicate the approved annual schedule of proposed monitoring to the offices listed below:
 - 1. The DBLS Hub Director
 - 2. The Office of Field Policy and Management via the Regional Administrator, Deputy Regional Administrator, and Field Office Director
 - 3. Program Offices (e.g., CPD, PIH, etc.) via the Directors/Administrators in the Regional and Field Offices

12-16 **Pre-monitoring preparation.**

- A. **Coordinating monitoring staff.** When more than one person is participating in monitoring an LCA, the areas of responsibility for each participant should be discussed prior to the review to avoid duplication of each other's work and unnecessary use of LCA staff time.
- B. **Reviewing available data.** The LSS should review data available within HUD office(s) in preparation for the review. The data should be used to evaluate LCA activity and to identify issues or potential issues. The sources listed below are illustrative of information available for in-house review:
 - 1. HUD LCA files, including all correspondence to, from, or concerning the LCA.
 - 2. The LCA's Grantee Performance Report (GPR) or other periodic reports (including CAPERS, and IDIS reports).

3. LCA monitoring file including review guides, monitoring reports, and letters closing monitoring findings.
4. Information contained in LSIS.
5. HUD multifamily housing production reports listing projects being administered by local or state agencies, such as Risk-Sharing projects administered by state housing finance agencies.
6. The LCA's risk assessment, to ensure those factors which elevated the risk standing are included in the monitoring strategy.

C. **LCA monitoring strategy.** The LSS should develop a monitoring strategy to establish the framework for conducting the review. The strategy should include the following:

1. The monitoring schedule for all LCA functions, areas, and/or operating divisions selected for review and the staff who will be involved.
2. The issues which will be the focus of monitoring.
3. The selected activities to be reviewed.
4. The interview schedule for the LCA.
5. The schedule of completed work from the review team members.

12-17 **Notification of on-site visit.** The LSS must notify the LCA in writing *at least* 14 calendar days prior to the date of the planned on-site monitoring. The LSS must coordinate with the LCA prior to any planned visit to determine availability of key LCA staff.

The LSS will send the notification letter by either certified mail or email with return receipt. The LSS will include the following details in the notification letter:

1. Function(s), area(s) and/or operating division(s) selected for review,
2. LCA staff that should be available during the on-site review (e.g., compliance officer, director, or designee, etc.),
3. Example listing of documentation, files, etc. that will be reviewed during the on-site visit,
4. Names of the HUD staff conducting and participating in the on-site review,
5. Dates the on-site visit will occur,
6. Dates/Times for meetings and interviews,
7. The anticipated location(s) at which field work will be performed, and
8. Other information as determined necessary by the LSS and/or Deputy Director.

The LCA is responsible for ensuring that its files are organized in a manner that are reviewable by the LSS.

IMPORTANT: For *state* grantee reviews that will include on-site reviews of the state's recipients, the notice to the state must be provided sufficiently in advance that the state grantee may provide written notice to its recipient(s) at least 14 calendar days in advance of the on-site review.

12-18 **Conducting a monitoring review.** When conducting a basic monitoring review, the following steps shall be followed (additional steps for remote and state monitoring reviews are in paragraphs 12-19 and 12-20, respectively):

- A. **Entrance conference.** The LSS (along with any other members of the review team) conducts an entrance conference with appropriate LCA staff and officials to introduce the review team and explain the review's purpose and schedule. The LSS will also identify LCA staff needed for interviews (including operating divisions, LCA compliance staff, etc.) and records that the LCA must make available for review.
- B. **LCA-generated reports and materials review.** The LSS reviews materials generated by the LCA providing detailed information on project descriptions, budget, percentage of project completion, certified payrolls, etc. The LSS determines what information is necessary and appropriate to conduct the monitoring review.
- C. **LCA file review.** The LSS shall review LCA files, including subrecipient files, for required documentation where appropriate. The LSS shall assess the accuracy of information provided to HUD and the level and effectiveness of LCA labor standards compliance activities.

The LCA is responsible for ensuring that files are organized. The LSS will not attempt to organize files for the LCA during the review. If the LCA fails to provide adequate organization of files in a manner the LSS may review them, the LSS will identify this aspect of the review in its final report under the category of the LCA's management and operational efficiency.

- D. **Interviews.** The LSS shall interview members of the LCA's staff and, as appropriate, subrecipient staff to discuss the LCA's performance and determine capacity. The LSS also determines the level of training or technical assistance the LCA may need in order to adequately perform its labor standards compliance responsibilities.
- E. **Project Site reviews.** It may be necessary for the LSS to visit project site(s) to validate LCA records. The LSS determines the necessity for project site visits based on the examination of the LCA's files and interviews with LCA staff and subrecipients.
- F. **Measure performance.** The LSS determines whether the individual activities reviewed have been correctly administered based on the review of records, interviews with persons involved in the program and any project site visits.

The LSS should measure the LCA's performance against DBLS established requirements. When deficiencies are documented, the LSS should assess:

1. The reason for the deficiency (e.g., lack of knowledge, lack of management

- control procedures, etc.);
- 2. Whether the cause is unique or whether the problem is systemic; and
- 3. Any corrective action the LCA is undertaking.

G. **Analyze results.** The LSS should analyze the monitoring results and pertinent in-house data to detect strengths, weaknesses, opportunities and existing or potential problems in the LCA. The analysis shall include the outcomes of the individual activities and the action(s) the LCA is undertaking to improve/maintain performance.

H. **Reviewer conclusions.** The LSS shall reach conclusions about:

- 1. The adequacy of the LCA's management system for the administration of labor standards (LCA operations, staff knowledge, file management, etc.);
- 2. Whether the program is being administered in compliance with laws and regulations; and
- 3. The accuracy of the data in the LCA's reports to HUD

For state grantees only, the LSS shall also compare and conclude accuracy of the data in the LCA's reports to DOL.

I. **Exit conference.** The LSS shall conduct (or when part of a review team, participate in) an exit conference or other form of consultation with the appropriate LCA officials to present preliminary conclusions resulting from the on-site monitoring visit. The LSS also conducts follow-up inquiries to assure the conclusions drawn by the LSS are based on accurate information. A record of the exit conference (including attendees, date, time, items covered, preliminary conclusions, any LCA disagreements with preliminary conclusions and required follow-up actions) is a required part of the monitoring record for the review.

12-19 **Remote monitoring of LCAs.** Remote monitoring parallels on-site reviews except in this method the LCA submits requested documents and other information via email or other delivery method to DBLS staff for review and evaluation. If U.S. postal mail is used, certified mail with recipient signature is required. Because DBLS does not prescribe a filing system for LCAs, the records submitted by an LCA shall be returned in the same order/structure as received.

Generally, remote monitoring will be conducted for less complex LCAs and LCAs where the factors contributing to a higher risk score may be evaluated remotely. Remote monitoring may also be performed of higher risk and/or more complex LCAs when DBLS staffing and travel resources are limited.

The steps for remote monitoring include:

A. **Initial contact with LCA.** The LSS makes initial telephone contact with the LCA to coordinate the timing of the remote monitoring review consistent with paragraph 12-14.

- B. **Entrance conference.** The LSS will discuss with the LCA the following:
1. Activities subject to prevailing wage requirements;
 2. LCA structure;
 3. The areas that will be reviewed and the documentation, records and other materials likely to be requested for review; and
 4. That telephone interviews with staff may be necessary as part of the review.

Note: If the LCA has multiple operating divisions/agencies or functions, the LSS covers the same preparatory items with an overarching entity of the LCA or with the separate operating divisions/agencies as appropriate.

In some cases, during the initial telephone contact, the LSS and LCA can agree on the projects/contracts that will be reviewed and the information and documents the LCA must submit to the LSS for review. In such cases, the LSS may bypass steps C and D below and confirm in writing the agreements reached. The date of this letter constitutes the “Entrance Conference Date” for remote monitoring and the beginning HUD Review Date.

- C. **Confirmation of documents requested.** The LSS sends the LCA email confirmation of the initial contact (*aka* initial notification) detailing the documents requested during the initial contact.

This correspondence will also describe the remote monitoring procedures. The list of activities will form the basis for the LSS’s selection of individual projects/contracts to review, and will consist of the following elements:

1. Project name and identifier (if any) agency officials use to refer to the activity.
2. Contract/budget amount.
3. Brief description of the key elements of the work that is triggering the labor standards activity (e.g., “rehabilitation of a 2-story, 16-unit apartment building”).

- D. **Review of LCA information and request for records.** The LSS shall review the information submitted by the LCA along with other relevant data and, based on this review, select the operating divisions/agencies or functions, and the activities that will be assessed during the monitoring. The LSS transmits the request for records and instructions for submission. The request identifies the activities that will be assessed and describes the records that are needed. The request instructs the LCA to email records with an inventory of the contents. The date of this transmittal constitutes the “Entrance Conference Date” for remote monitoring and beginning HUD Review Date.

- E. **Confirmation and review of records received.** The LSS provides confirmation to the LCA of the records received, noting any requested records that were not included. The LSS examines the materials submitted. Additional discussions between the LSS and LCA may be necessary to assess staff understanding of labor standards requirements, clarify issues and resolve questions during the review

process.

Discoveries from the review of the initial submission may necessitate expanding the scope of the review to validate conclusions.

- F. **Review conclusions.** The LSS shall formulate and document conclusions following the analyses of the submissions and interviews with LCA staff. The conclusions shall address the same elements as those relating to on-site monitoring (see paragraph 12-18(H)).
 - G. **Exit conference.** The LSS shall conduct an exit conference with the LCA by telephone or other acceptable conferencing system (e.g., visual conferencing platforms). A record of the exit conference is required documentation for the monitoring record (see paragraph 12-18(I)). The date of the exit conference is the HUD closing review date.
 - H. **Monitoring report.** The LSS shall prepare the monitoring report consistent with paragraph 12-14, including content, consultation, distribution of reports, documentation, records maintenance, and tracking responses to resolution. When the monitoring report is delivered to the LCA (or acceptable alternative), it is recorded in the LSIS.
 - I. **Supporting documentation.** The LSS shall make copies of the LCA's documents, as needed, to support the conclusions/recommendations in the report. If evidence of the same problem is repeated on multiple documents, the LSS should copy only as many of the documents as needed to support the conclusions and to track any issues to full resolution.
- 12-20 **State program reviews.** The State Community Development Block Grant Program (State CDBG) and state-administered HOME Investment Partnerships Program (HOME) have many similarities to the corresponding programs administered by units of general local government; however, there are some differences. State monitoring reviews are conducted following the same principles and processes as are applicable to cities, counties, etc., except that:
- A. **State flexibility.** States have a great deal of flexibility in establishing their own procedures and requirements for administering state CDBG funds and providing oversight of its recipients. A finding of noncompliance may be determined based on evidence of failure to comply with a state's own requirements, as well as mandatory HUD and/or DOL requirements.
 - B. **Review of state recipients.** States distribute funds to units of local government (State Recipients). Every state program monitoring does not require State Recipient-level review; but such reviews should be conducted periodically to assess the state's support to, and oversight of, its State Recipients.
 - C. **Disposition of findings at state-recipient level.** Because the principal intent of

monitoring State Recipients is to measure state performance in training and overseeing their program, problems detected at the State Recipient level are identified as problems in the State's oversight of its respective programs (e.g., CDBG, HOME).

The LSS may make findings at the State Recipient level; however, the state oversees the corrective action taken by the State Recipient and reports resolution(s) back to HUD DBLS. The LSS provides the State with corrective actions to improve its systems and processes as well as to address the deficiencies at the State Recipient level.

- D. **Frequency of DBLS monitoring of state CDBG grantees.** The HUD Community Planning and Development (CPD) operating divisions prescribe annual on-site monitoring of state grantees by their staff, while DBLS' participation is driven by its annual risk assessment and monitoring plan. Generally, DBLS' monitoring report of a state program is consolidated into a broader monitoring report sent from either the CPD Director or Field Office Director (see paragraph 12-23).
- E. **State CDBG monitoring review guides.** The review guide for the state program is form HUD-4743 (Federal Labor Standards Review Guide: State-CDBG and HOME).

12-21 **Evidence and evaluation.** During the monitoring review, information is discovered and gathered. This is considered evidence to support the conclusions contained in the final monitoring report.

- A. **Types of Evidence.**
 - 1. **Physical:** direct observation of people, property, or processes. This is considered the most dependable type of evidence and is essential in determining adequacy of internal controls.
 - 2. **Documentary:** digital or hard-copy files, records, photographs, etc. This is evidence used to verify reliability of evidence gained through other methods.
 - 3. **Testimonial:** interviews and other verbal or written statements of activities from LCA staff, workers, and others. This type of evidence requires corroboration before it can be used in support of a finding.
 - 4. **Analytical:** data-driven evidence supported by computations, reasoning, comparisons, and industry standards applied to information retrieved from various sources.
- B. **Standards for determining usability of evidence; definitions.** Evidence used in the final report to support LSS conclusions must meet all three standards in this subsection. DBLS has adopted the following standards and definitions:
 - 1. **Sufficient:** Factual and credible evidence which would lead a reasonable person who is not an expert in the program area to reach the same conclusion as the reviewer.
 - 2. **Reliable:** Trustworthy and verifiable evidence (such as sworn affidavits,

certified statements, testimony under oath, etc.) that is obtained by using reasonable review methods. If there is any reason to question the validity or completeness of a piece of evidence, additional measures must be taken to support the validity of the evidence before it will be deemed “reliable” evidence as defined herein.

3. **Relevant:** Evidence that is linked directly to the monitoring review objectives and has a logical, reasonable, and legitimate relationship to the issue(s) being reviewed for compliance.

- C. **Evaluation.** The evaluation phase of the monitoring review is ongoing. It is in progress from the initial contact between the LCA and the LSS until the submission of final monitoring review report.

The LSS evaluates records examined, interviews conducted, and observations made during the on-site visit or remote monitoring review to make final conclusions. The significance of deficiencies and whether they need to be placed in the official report (rather than handled verbally) is at the discretion of the LSS. The following points provide some guidance to the LSS when determining whether deficiencies warrant inclusion in the final report:

1. Importance to the accomplishment of the mission and vital functions of the program;
2. Pervasiveness of the condition or issue (isolated or widespread);
3. Indication of fraud, waste, abuse, or illegal acts;
4. Extent of the deficiency; and
5. Importance to the maintenance of adequate controls (for example, discrepancies that are “harmless” when evaluated individually may be considered “detrimental” when taken together to form a pattern in administering labor standards requirements).

- 12-22 **Monitoring reports.** The LSS shall submit a final monitoring report detailing the results of the monitoring visit to the following entities/individuals upon conclusion of the on-site visit or remote monitoring review:

1. the LCA program director who administers HUD funding for the LCA,
2. the executive director of a PHA, IHA or TDHE (with copies to appropriate LCA operating divisions or agencies), and
3. the Deputy Director.

Every conclusion in the monitoring report must be supported by evidence consistent with this chapter. The LSS must apply applicable law, regulation, handbook, or other directive to the evidence submitted to determine compliance with labor standards requirements.

When labor standards monitoring is conducted in conjunction with a HUD team visit, a single monitoring report is submitted to the LCA (see paragraph 12-22(N)).

- A. **Timing.** The LSS should issue the report as early as possible, particularly if there are major findings. The monitoring report shall be issued within thirty (30)

calendar days of the exit conference.

- B. **Content of monitoring report.** The monitoring report to the LCA must include:
1. The LCA monitored (including PHA number for housing authorities and the grant type of each grant monitored for CPD-funded LCAs);
 2. The LSS who conducted the review;
 3. The date(s) of the review;
 4. Whether the review was performed on-site or remotely;
 5. The scope of monitoring (including the operating divisions, agencies or functional areas, if less than the entire LCA is reviewed (e.g., maintenance wage administration, housing development program, etc., for PHAs), and activity/contract/project records reviewed);
 6. Any areas, functions or operating divisions identified in the notification letter that were not reviewed, with a statement explaining the reason(s) these were not covered (e.g., time constraints, lack of documentation, etc.);
 7. Monitoring conclusions for each function/area reviewed and for the LCA's administration of labor standards collectively (supported by the facts considered in reaching the conclusions and limited to the functions/areas reviewed);
 8. Specific corrective actions the LCA must take to resolve each finding and/or address each concern and, where appropriate, an indication that findings/concerns were resolved during the review;
 9. The date by which the correction action(s) must be taken;
 10. The opportunity to contest findings; and
 11. As appropriate, a statement that technical assistance was provided on-site, or an offer of technical assistance if conditions precluded on-site technical assistance in sufficient depth.

Note: When negative conclusions are identified in a monitoring report, they should be clearly labeled as either a finding or as a concern in accordance with the definitions of these terms provided at paragraph 12-22(E). Also, when appropriate and feasible, the findings should be quantified. For example, describe the finding as *"The agency failed to notify ABC Contracting that a comparison of 20 payrolls to the applicable wage decision revealed underpayments to 14 workers totaling \$14,380.00..."* rather than *"A review of payrolls revealed substantial underpayments to workers."*

- C. **Tone of monitoring report.** Generally, the tone of the monitoring report is constructive and assistive, describing objective performance of the LCA.

Deficient performance is evaluated using the criteria laid out in this chapter and highlights violations of law and regulations and then assesses DBLS-specific rule noncompliance. The disclosure of major findings and concerns should be accompanied with recommendations and offers of technical assistance to correct the deficient performance.

Note: It is appropriate to recognize the LCA for making significant improvement in previously identified deficiencies.

- D. **Overall assessment of the LCA's administration of labor standards.** The LSS concludes whether the LCA's management operations and performance, when measured by the functions/areas and information reviewed, are adequate. Further, the LSS may conclude activities are exemplary or exhibit significant improvement or achievement.
- E. **Findings and concerns.** The monitoring report should particularly highlight any findings and concerns likely to result in significant negative consequences if not corrected. It may be appropriate to summarize the major conclusions, both positive and negative, in the body of the transmittal letter, while the details of the review are in the report.
1. **Finding:** A finding is noncompliance with statute, regulation, handbook, or official directive. Each finding should be clearly titled "Finding," and include the following information:
 - a. **Condition:** A description of the problem;
 - b. **Criteria:** The program requirement (and citation thereto);
 - c. **Effect:** Results or adverse impact(s) of the condition;
 - d. **Required corrective action:** Addresses the condition and prevents recurrence; and
 - e. **Time frame for response:** The date by which action is to be completed and reported to DBLS.
 2. **Concern:** A nonconformance with a standard or guidance *other* than a statute, rule, handbook or other official directive, or a condition that, if not altered, is likely to result in noncompliance with a statute, rule, handbook, or other official directive. Each concern should be clearly titled "Concern" and include the condition, cause, effect, and may include recommended actions.
- F. **Recommended or required corrective actions.** Corrective actions shall be based on sound management principles or other programmatic guidelines. For negative conclusions that are Concerns, the LSS recommends actions and offers technical assistance.
- The level of attention given to performance problems should reflect the seriousness of the problem, whether or not corrective action can be required. The monitoring report may include references and an overview of technical assistance provided; however, the detailed summary of technical assistance subject matter should be included in a separate transmittal to the LCA.
- G. **Goal of corrective actions.** Corrective actions are designed to prevent a continuance of the deficiency; mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and prevent a recurrence of the same or a similar deficiency. Whenever possible, the outcome should also result in

improving the operational capacity of the LCA. There may be a number of acceptable solutions to resolving a deficiency and the LCA should be allowed to respond to each problem with any reasonable solution of its choice.

- H. **Exemplary practice.** When the LSS observes an especially innovative, outstanding or useful labor standards practice by an LCA that is replicable for other LCAs, the recognition of an exemplary practice is appropriate for inclusion in the monitoring report. In addition to including a synopsis of the practice and benefits in the review, LSS should forward a complete description of the practice through their Deputy Director to HQLS so that the practices, processes and systems can be distributed as a model for similar organizations.
- I. **Referral to OIG or DOL.** If deficiencies or issues are found that are egregious, or that violate law that is within the purview of the OIG and/or DOL (e.g. fraud, FLSA violations, etc.), the LSS brings the situation to the attention of the Deputy Director for possible referral to OIG and/or DOL for further response. The Deputy Director maintains a record of referrals to OIG and/or DOL for a period determined by HQLS.
- J. **Clarity of communication.** The LSS strives to be clear and concise when communicating monitoring results to ensure that the report will be understandable to the LCA and interested parties beyond the LSS. Citations for findings should be precise, rather than general, with corrective actions clearly addressing the deficiency and its cause(s). When possible, completion of the corrective actions should enhance the LCA's capacity and prevent recurrence.

When the LSS documents several, related noncompliance activities in an LCA's administration of labor standards under a single, consolidated description, the LCA is prompted to focus on systemic improvements to its management practices and oversight.

- K. **Objectivity of report.** The monitoring report is objective and dispassionate, avoiding subjective statements or conclusions that are not relevant to the scope. The methodology and materials generated during the on-site visit or remote review should be such that an independent reviewer can adequately assess the quality and accuracy of the monitoring and the evidence supporting the report.

Note: The monitoring report and record may be a basis for further action by the Department, if circumstances warrant.

- L. **Opportunity to contest findings, appeals.** The monitoring report or its transmittal includes the opportunity and instructions for an LCA to appeal HUD's determinations regarding compliance, the proposed corrective actions and/or date(s) for required corrective action(s). The LCA's appeal must include evidence supporting its position, proposed revised corrective action(s) and/or revised corrective action completion date(s). The appeal shall be addressed to the signatory of the transmittal of the monitoring report. If the report contains no negative

conclusions, this language is not required. Chapter 7, paragraph 7-4 provides more details.

- M. **Consultation prior to issuing report.** Prior to issuing the report to the LCA, the LSS consults with the Deputy Director, or a designated authority, on the evidence, conclusions and required/recommended actions resulting from the review. The purposes of the consultation are for the Deputy Director to:
1. Assess the quality and accuracy of the monitoring;
 2. Ensure consistency in handling deficiencies;
 3. Ensure proper detection and correction of deficiencies;
 4. Identify systemic deficiencies; and
 5. Ensure that HUD makes appropriate, supportable judgments and draws sound conclusions.
- N. **Distribution of report.** In addition to the principal Program Director or Executive Director of the LCA and operating agencies addressed in the transmittal letter of the report, the LSS (or Deputy Director) shall provide copies of the monitoring report to the following:
1. The Regional Administrator or Field Office Director within whose operational jurisdiction the LCA is located;
 2. Directors of the HUD program office(s) with jurisdiction for the LCA;
 3. The Deputy Director, if the report is issued at the field office level; and
 4. Other appropriate individuals as determined by the Deputy Director.
- O. **Documentation.** Monitoring activities and results must be well documented. The monitoring report is supported by any working papers, including the completed review guides used in the monitoring review. All correspondence and working papers relating to the monitoring and conclusions must be in DBLS' LCA file. This documentation must include:
1. Initial written notification correspondence;
 2. Entrance conference notes (including attendees);
 3. Completed review guides;
 4. Review notes;
 5. Supporting documentation;
 6. Exit conference notes;
 7. Monitoring report; and
 8. Records of follow-up actions through close-out (including LCA responses).
- P. **Record retention.** The office generating the report shall maintain monitoring records for a period of five (5) years or for a period to include the records for the most recent and immediate past monitoring reports if longer retention is necessary to accommodate these two report records.
- 12-23 **Consolidated monitoring reports.** In situations where the monitoring report is being consolidated into a broader monitoring report with the program office and/or other specialty function, the program office will request the concurrence of the LSS or Deputy Director who prepared the labor standards portion of the report. The reasons for any non-

concurrence must be discussed with the HUD program office and agreement reached prior to the issuance of the report.

The LSS must maintain a copy of the DBLS-only monitoring report for the DBLS file.

12-24 **Follow-up action.**

- A. **Evaluation of LCA response.** When the LCA's response has been received, the LSS shall review the corrective action proposed or taken by the LCA. The LSS review should be completed and a written evaluation communicated to the LCA within thirty (30) calendar days of receipt of the response. If the response satisfies the requirements of the corrective action, an evaluation letter closing the finding shall be issued. If the review indicates the action was less than satisfactory, an evaluation is sent to the LCA specifying additional action(s) needed with an action due date.
- B. **Extension of due date/on-site follow-up.** The action due date(s) may be extended where the LCA demonstrates good faith efforts to resolve the finding. Written confirmation of the extension shall be transmitted to all parties addressed or copied on the original report. A follow-up visit may be necessary to verify corrective action or to provide technical assistance when the LCA has been unable to resolve or correct the finding.
- C. **LCA response overdue.** In the event the LCA fails to meet a target date for corrective action or response, a telephone call is appropriate and is documented in the monitoring file. In cases where unforeseen obstacles to complete required actions by the target date warrant extension of that date, written confirmation of the extension shall be transmitted to all parties addressed or copied on the original report.
- D. **LCA response 30 days overdue.** If the LCA has not responded within thirty (30) calendar days after the due date for corrective action, a letter shall be sent to the LCA requesting the status of the corrective action and warning of the possible consequences for failure to comply, as provided under applicable regulations.
- E. **Referral for sanctions.** The LSS, after consulting with the Deputy Director and HQLS, shall transmit to the appropriate Program Office Director a recommendation to impose sanctions against an LCA that fails to make good faith efforts to respond to repeated follow-up requests, or repeatedly fails to make the required corrective actions. The recommendation shall be accompanied with copies of all documentation listed at paragraph 12-22(O).

12-25 **Closing monitoring findings.** As the LCA completes and reports satisfactory corrective action(s), the LSS shall provide written confirmation of such status to the LCA. The confirmation is copied to all parties addressed or copied on the original report.

12-26 **Monitoring activities tracking system.** The Department requires that certain dates and events relating to monitoring activities are recorded and systemically tracked.

A. **Dates and events to track.**

1. Date of written notification of planned monitoring review;
2. Actual date(s) of monitoring review;
3. Dates of entrance and exit conferences;
4. Date the monitoring report was sent;
5. Target dates for resolution of any findings or concerns;
6. Date LCA response is received;
7. Date of notification of final close-out;
8. Date unresolved and/or unaddressed noncompliance findings were referred and to whom; and
9. Final resolution of any referral.

B. **Use of DBLS management information system.** DBLS' LSIS is used to the greatest extent feasible to record and track the events listed in paragraph 12-26(A). In addition to serving as a task-management tool for the DBLS nationwide, the system serves as the basis for reporting to HQLS.

Section III – Using the Monitoring Review Guides

- 12-27 **The LCA monitoring review guides.** The LCA monitoring review guides are designed to provide structure in the review processes, guide the LSS in collecting and recording data and observations, and provide objective evaluation criteria in determining LCA performance. The guides are available on the DBLS website.
- 12-28 **Format of review guides.** The review guides are designed to elicit "yes" or "no" answers. A "no" answer does not necessarily mean that an LCA has done something wrong, but when the reviewer concludes a requirement has not been met, more descriptive responses and details should be referenced and recorded on supplementary pages. Not applicable or "N/A" should be checked for the questions that do not apply to the function or activity under review. Although this approach may take more time up-front, it will yield higher quality review results providing a more complete representation of the LCA's performance and provide comprehensive data for the monitoring report. These guides are used in discussions with HUD program office staff and/or DBLS managers, as well as for any future LSS assigned to the LCA and for others who have a need to review the LCA's performance.
- 12-29 **Drawing conclusions from data recorded on review guides.**
- A. **Isolated versus systemic problems.** Where no problem, or only minor problems, are found during the review of selected activities falling within a given review area, such as the Wage Decision Issuance, the LSS can generally conclude each of the LCA's activities falling within that review area is in compliance.
- Conversely, where a pattern of significant problems is disclosed, it is reasonable to conclude similar problems are likely to exist with other projects or contracts in the same review area. For instance, if each contract prepared by one department of an agency omitted required labor standards provisions, while contracts prepared by other departments did not, the LSS concludes the problem is not agency-wide, but a pattern within the one department.
- B. **Expanding the review.** If the slate of selected review activities shows problems within a review area, as time permits, other activities are spot-checked to determine whether the problem is isolated or systemic within that review area. Also, if during the review, operating divisions/agencies within the LCA that are associated with labor standards administration are newly identified, expanding the review to include the newly identified operations should be considered. When the original scheduled time for the review does not permit expansion, the LSS may, with the approval of the Deputy Director and in consultation with the LCA, extend the on-site review period.
- If the review time cannot be extended, the area with problems is flagged for a more thorough review during the next monitoring visit and the LCA should be advised of this problem and/or asked to review this area and notify the LSS of its conclusions.
-

- 12-30 **Regional/local amendments to monitoring review guides.** The Deputy Director may approve amendments to the review guide areas and elements in order to accommodate special circumstances presented in the organization or operation of an LCA or class of LCAs in its jurisdiction. The Deputy Director must ensure that any added review items are properly classified as to whether the standard is required by statute, regulation, handbook, or other official directive.
- 12-31 **Inventory of Risk Assessment and monitoring guides.**
- A. Risk Assessment.
 - 1. Risk Assessment Desk Aid
 - 2. Risk Analysis Worksheet
 - B. Monitoring Guides.
 - 1. HUD-4741 Federal Labor Standards Agency On-site Monitoring Review Guide
 - 2. HUD-4742 Federal Labor Standards Agency Remote Monitoring Review Guide
 - 3. HUD-4743 Federal Labor Standards Review Guide: State CDBG and HOME

Reorganization Plan #14 of 1950

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 (see 5 U.S.C. 901 et seq.).¹

LABOR STANDARDS ENFORCEMENT

In order to assure coordination of administration and consistency of enforcement of the labor standards provisions of each of the following Acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by these agencies, and cause to be made by the Department of Labor such investigations, with respect to compliance with and enforcement of such labor standards, as he deems desirable, namely:

(a) The Act of March 3, 1931 (46 Stat. 1494, ch. 411), as amended (40 U.S.C. 276a to 276a-6); (b) the Act of June 13, 1934 (48 Stat. 948, ch. 482) (40 U.S.C. 276c); (c) the Act of August 1, 1892 (27 Stat. 340, ch. 352), as amended (40 U.S.C. 321-323); (d) the Act of June 19, 1912 (37 Stat. 137, ch. 174), as amended (40 U.S.C. 324, 325); (e) the Act of June 3, 1939 (53 Stat. 804, ch. 175), as amended (12 U.S.C. 1703, 1708, 1711, 1713, 1715c, 1716); (f) the Act of August 13, 1946 (60 Stat. 1040, ch. 958); (g) the Act of May 13, 1946 (60 Stat. 170, ch. 251), as amended; (h) the Airport and Airway Development Act of 1970; and (i) the Act of July 15, 1949 (ch. 338, Public Law 171, Eighty-first Congress, First Session). (As amended Pub. L. 91-258, title I, Sec. 52(b)(7), May 21, 1970, 84 Stat. 235).

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 14 of 1950, prepared in accordance with the provisions of the Reorganization Act of 1949. For the purpose of coordinating the administration of labor standards under various statutes relating to Federal construction and public works or to construction with federally financed assistance or guaranties, the reorganization plan authorizes the Secretary of Labor to prescribe appropriate standards, regulations, and procedures with respect to these matters and to make such investigations concerning compliance with, and enforcement of, labor standards as he deems desirable. The purpose is to assure consistent and effective enforcement of such standards. The plan is in general accord with the recommendations of the Commission on Organization of the Executive Branch of the Government. It constitutes a further step in rebuilding and strengthening the Department of Labor to make it the central agency of the Government for dealing with labor problems.

After investigation I have found and hereby declare that the reorganization contained in this plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

¹ Effective May 24, 1950, 15 F.R. 3176, 64 STAT. 1267, as amended May 21, 1970, Public Law 91-258, Title I, Sec. 52(B)(7), 84 STAT. 235

There are several laws regulating wages and hours of workers employed on Federal contracts for public works or construction. The "eight hour laws" limit the employment of laborers and mechanics on such projects to 8 hours per day and permit their employment in excess of that limit only upon condition that time and one-half the basic-wage rate is paid for the excess hours. The Davis-Bacon Act provides that the minimum rates of pay for laborers and mechanics on certain Federal public-works contracts shall be those prevailing for the corresponding classes of workers in the locality as determined by the Secretary of Labor. The Copeland anti-kick-back law prohibits the exaction of rebates or kick-backs from workers employed on the construction of Federal public works or works financed by the Federal Government and authorizes the Secretary of Labor to make regulations for contractors engaged on such projects.

In addition to the above statutes, there are several Acts which require the payment of prevailing-wage rates, as determined by the Secretary of Labor, to laborers and mechanics employed on construction financed in whole or in part by loans or grants from the Federal Government or by mortgages guaranteed by the Federal Government. These Acts are: the National Housing Act, the Housing Act of 1949, the Federal Airport Act, and the Hospital Survey and Construction Act of 1946.

With the exception of the Department of Labor, the Federal agencies involved in the administration of the various Acts are divided into two classes: (1) agencies which contract for Federal public works or construction; and (2) agencies which lend or grant Federal funds, or Act as guarantors of mortgages, to aid in the construction of projects to be built by State or local public agencies or private individuals and groups. The methods of enforcing labor standards necessarily differ between these two groups of agencies.

The methods adopted by the various agencies for the enforcement of labor standards vary widely in character and effectiveness. As a result, uniformity of enforcement is lacking and the degree of protection afforded workers varies from agency to agency. In order to correct this situation, this plan authorizes the Secretary of Labor to coordinate the administration of legislation relating to wages and hours on federally financed or assisted projects by prescribing standards, regulations, and procedures to govern the enforcement activities of the various Federal agencies and by making such investigations as he deems desirable to assure consistent enforcement. The actual performance of enforcement activities, normally including the investigation of complaints of violations, will remain the duty of the respective agencies awarding the contracts or providing the Federal assistance. Since the principal objective of the plan is more effective enforcement of labor standards, it is not probable that it will result in savings. But it will provide more uniform and more adequate protection for workers through the expenditures made for the enforcement of the existing legislation.

Harry S. Truman
The White House,
March 13, 1950



information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0100], and must be received by November 4, 2020.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the <https://www.reginfo.gov>, comment-submission web page. OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0064.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The

Coast Guard published the 60-day notice (85 FR 44914, July 24, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR subchapter S.

OMB Control Number: 1625–0064.

Summary: The regulations require owners, operators, or masters of certain inspected vessels to obtain and/or post various documents as part of the Coast Guard commercial vessel safety program.

Need: Title 46 U.S.C. 3306 authorizes the Coast Guard to prescribe rules for the safety of certain vessels. Title 46 CFR Subchapter S contains the rules regarding subdivision and stability.

Forms: None.

Respondents: Owners, operators, or masters of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 7,870 hours to 7,193 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 29, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–21870 Filed 10–2–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6231–D–01]

Delegation of Authority for the Office of Field Policy and Management

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Through this notice, the Secretary of the Department of Housing and Urban Development delegates to the Assistant Deputy Secretary for Field Policy and Management and to the Director for Field Policy and Management authority for the management and oversight of the Department's field operations.

DATES: September 30, 2020.

FOR FURTHER INFORMATION CONTACT: John B. Shumway, Assistant General Counsel, Administrative Law Division, Department of Housing and Urban

Development, at 451 7th Street SW, Room 9262; Washington, DC 20410–0500 or telephone number 202–402–5190 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Previous delegations of authority from the Secretary of HUD to the Assistant Deputy Secretary for Field Policy and Management are hereby revoked and superseded, including the delegations published on September 26, 2018 (83 FR 48649).

Section A. Authority

1. Field Operations. The Secretary of HUD hereby delegates to the Assistant Deputy Secretary for Field Policy and Management and the Director for Field Policy and Management authority for the management and oversight of the Department's field operations. In carrying out this authority, the Assistant Deputy Secretary for Field Policy and Management and the Director for Field Policy and Management shall, among other duties:

a. Coordinate the implementation of the Department's policies and programs in the field in consultation with field program directors. Program coordination does not mean program decision-making but, rather, collecting local information, measuring community impact, initiating cross-program communication and coordination, and facilitating the resolution of potential program differences through the appropriate channels, if necessary.

b. Manage and assess field resources to ensure that operations are efficient and effective.

c. Coordinate and convey the Strategic Plan and Regional or Local Operating Plans with the field.

d. Advise the Secretary on policy and management of the field.

e. Consult with program directors regarding implementation of departmental management goals, secretarial and presidential initiatives, and Annual Performance commitments.

2. Promise Zone Initiative. The Secretary delegates to the Assistant Deputy Secretary for Field Policy and Management and the Director for Field Policy and Management all power and authority for the day-to-day operations and administrative functions related to the Promise Zone Initiative. The Promise Zone Initiative supports the Department's responsibilities under sections 2 and 3 of the HUD Act, 42 U.S.C. 3531–32, to assist the President

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in achieving maximum coordination of the various Federal activities that have a major effect upon urban community, suburban, or metropolitan development; to develop and recommend to the President policies for fostering orderly growth and development of the Nation's urban areas; and to exercise leadership, at the direction of the President, in coordinating Federal activities affecting housing and urban development. This authority includes coordination of the selection process and the development of resulting recommendations.

The delegated authority related to the Promise Zone Initiative does not include the authority to issue or waive Notices of Funding Availability or the equivalent, regulations, or statutes, but does include the authority to redelegate the authority provided.

3. *Davis-Bacon and Labor Standards.* The Secretary delegates to the Assistant Deputy Secretary for Field Policy and Management and the Director for Field Policy and Management all authority with respect to Davis-Bacon and Labor Standards administration and enforcement vested in, or delegated or assigned to, the Secretary under statutes and other authorities relating to Davis-Bacon and Labor Standards, including, but not limited to, the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*), the Copeland Act (40 U.S.C. 3145), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), Reorganization Plan No. 14 of 1950 (5 U.S.C. App. 1 Reorg. Plan 14), the National Housing Act (12 U.S.C. 1701 *et seq.*), Section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q), the National Affordable Housing Act (42 U.S.C. 12704 *et seq.*), the United States Housing Act of 1937 (42 U.S.C. 1437), the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*), Executive Order 13502 (74 FR 6985), and certain Department of Labor regulations (29 CFR parts 1, 3, 5, 6, and 7). The authority delegated includes the authority to determine or adopt prevailing wage rates, which is vested in the Secretary by certain statutes, including, but not limited to, the United States Housing Act of 1937 (42 U.S.C. 1437) and the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*).

4. *EnVision Center Demonstration.* The Secretary delegates to the Assistant Deputy Secretary for Field Policy and Management and the Director for Field Policy and Management all power and authority for the day-to-day operations and administrative functions related to

the EnVision Center Demonstration. The EnVision Center Demonstration supports households in low-income communities and offers supportive services that focus on the four pillars of: Economic Empowerment, Educational Advancement, Health and Wellness, and Character and Leadership. The EnVision Center Demonstration is authorized by Title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1 *et seq.*), which authorizes the Secretary to undertake such programs of research, studies, testing, and demonstration relating to the mission and programs of the Department as he determines to be necessary and appropriate. The EnVision Center Demonstration also supports the Department's responsibilities under sections 2 and 3 of the HUD Act, 42 U.S.C. 3531-32, to assist the President in achieving maximum coordination of the various Federal activities that have a major effect upon urban community, suburban, or metropolitan development; to develop and recommend to the President policies for fostering orderly growth and development of the Nation's urban areas; and to exercise leadership, at the direction of the President, in coordinating Federal activities affecting housing and urban development. This authority includes coordination of the selection process and the development of resulting recommendations.

The delegated authority related to the EnVision Center Demonstration does not include the authority to issue or waive Notices of Funding Availability or the equivalent, regulations, or statutes, but does include the authority to redelegate the authority provided.

5. *Section 3 Performance Evaluation and Registry System.* The Secretary of HUD hereby delegates to the Assistant Deputy Secretary for the Office of Field Policy and Management and the Director for the Office of Field Policy and Management the responsibility and authority to manage Section 3 evaluation and reporting, as authorized by Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its attendant regulations, including the Section 3 Performance Evaluation and Registry System (SPEARS) any successor reporting system, and other related systems of record; to administer Section 3 Technical Assistance funds; and to coordinate and offer best practices to external stakeholders.

Section B. Authority To Redelegate
The Assistant Deputy Secretary for Field Policy and Management and the Director for Field Policy and Management are authorized to

redelegate to employees of HUD any of the authority delegated under section A above.

Section C. Authority Superseded
This Delegation supersedes all previous delegations from the Secretary of HUD to the Assistant Deputy Secretary for Field Policy and Management.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Benjamin S. Carson, Sr.,
Secretary.

[FR Doc. 2020-22001 Filed 10-2-20; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2020-N133;
FXES11130200000-201-FF02ENEH00]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act of 1973, as amended (ESA), prohibits certain activities that may impact endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits. **DATES:** We must receive your written comments on or before November 4, 2020.

ADDRESSES: *Document availability:* Request documents by phone or email: Susan Jacobsen, 505-248-6641, susan_jacobsen@fws.gov.

Comment submission: Submit comments by email to fw2_te_permits@fws.gov. Please specify the permit you are interested in by number (e.g., Permit No. TE-123456).

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Classification and Restoration Division, 505-248-6641. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite

LABOR STANDARDS CORE WORK ACTIVITIES - DEFINITIONS			
Item	Criteria	Timing	Source Document
A. CPD Programs			400-499 and 500-599 Agency Numbers
1) Monitoring Reviews	Number of monitoring reviews (on-site or remote) completed. NOTE: That both CDBG and HOME projects/contracts must be sampled in review if both programs are administered by the monitored agency. The monitoring report must specify each program and projects reviewed.	Date of report to grantee or to CPD.	Copy of report; entry to LR 2000 ¹ [Outgoing correspondence – “MV” (on-site) and/or “RM” (remote) document type.]
2) Training	Number of formal training sessions conducted. <i>Formal training</i> means scheduled training presented to an audience of not less than 5 LCAs or contractors and/or 10 participants with an agenda, planned curriculum and participant materials. Formal training does <i>not</i> include participation on panels, training provided during monitoring visits or one-on-one training for new client staff. These may be entered as <i>technical assistance</i> (see D.1).	Date of training session.	Copy of attendance list; agenda; LR 2000 [Outgoing correspondence – “TR” (training) document type.]

¹ All references to LR2000 likewise include any successor program/software/system instituted by HUD to manage DBLS work activity.

Item	Criteria	Timing	Source Document
B. PHA/TDHE Programs			001-399 and 700-799 Agency Numbers
1) Monitoring Reviews	Number of monitoring reviews completed.		Copy of report; LR 2000 [Outgoing correspondence – “MV” (on-site) and/or “RM” (remote) document type.]
2) Training	Number of formal training sessions conducted. (See definition, above).	Date of training session.	Copy of attendance list; agenda; LR 2000 [Outgoing correspondence – “TR” (training) document type.]
3) Maintenance Wage Determination	Number of annual maintenance wage rate determinations issued.	Date of transmittal to PHA/TDHE.	Copy of transmittal; HUD-52158; LR 2000 [Outgoing correspondence – “MW” document type.]
4) Nonroutine Maintenance Wage Determination	Number of annual <i>nonroutine</i> maintenance wage rate determinations issued.	Date of transmittal to PHA/TDHE.	Copy of transmittal; HUD-52158; LR 2000 [Outgoing correspondence – “AM” document type.]
C. Housing (HUD-Direct)			600-699 Agency Series
1) Active Projects	Number of projects subject to HUD compliance review (FHA/202/811/§8). [Active when the wage decision is locked in (initial closing or start of construction); remove after final closing clearance (provided no deposit needed). If deposit is needed, remove at final closing.]	Add to active at wage decision lock-in; Remove at final closing clearance/ final closing.	LR 2000 Note: Change status flag in LR 2000 from Pending to Active. [FHA Contract Analysis Module, Contract Information Screen, Status Flag.]

Item	Criteria	Timing	Source Document
2) Pending Projects	Number of projects with Firm Commitment applications (or equivalent) in process. [Pending when Firm Application is received; Convert to <i>Active</i> OR remove after final reject.]	Add to pending at firm application receipt; Convert at wage decision lock-in; Remove at final reject.	LR 2000 [FHA Contract Analysis Module, Contract Information Screen, Status Flag.]
3) Initial Closing Clearance	Number of clearances provided for initial endorsements/ closings.	Date of written clearance notice to Legal and/or Office of Housing.	Copy of clearance notice; LR 2000 [FHA Contract Analysis Module, Contract Information Screen, 4 th Tab – Contract Data – cont – Initial Closing Clearance Date.]
4) HUD-11 Interviews	Number of HUD-11 on-site interviews conducted by HUD Inspector or Labor Standards staff.	Date HUD-11's received in Labor Standards.	Numerical record of HUD-11's received; LR 2000 [Outgoing correspondence – "IN" (HUD-11 Interview Report) document type for agencies in 600-699 range or series, include "No. of Items".]
5) Project Reviews	Number of spot-check/HUD-11 reviews on project payrolls and other records (to detect violations/falsification).	Date of written documentation (e.g., letter, memo to file, email).	Copy of documentation; LR 2000 [Outgoing correspondence PR document type.]

Item	Criteria	Timing	Source Document
6) Final Closing Clearances	Number of clearances provided for final endorsements/closings.	Date of written notice to Legal and/or Housing for closing clearance/-closing conditions.	Copy of written notice/closing conditions; LR 2000 [FHA Contract Analysis Module, Contract Information Screen, 4 th Tab – Contract Data – cont – LR Final Closing Clearance Date.]
7) Deposits Executed	Number of Deposit Agreements executed.	Date of deposit confirmation; agreement execution, or date of entry to LR 2000.	Copy of deposit agreement and schedule; wire transfer receipt; LR 2000 [Deposit Module, Deposits – Deposit Agreement Received Date.] <i>Note:</i> Deposit requirement must be approved by Deputy Director.
8) Deposit Amount	Total amount placed on deposit.	Same as above.	Same as above.
9) Vouchers Processed	Number of payment or refund vouchers processed.	Date voucher approved for payment by HQLS.	Copy of voucher; LR 2000 [Deposit Module, Vouchers – Date of Disbursement and Amount.]
10) Voucher Amount	Total amount of vouchers approved for payment.	Same as above.	Same as above.

Item	Criteria	Timing	Source Document
11) Deposit Agreements Cleared	Number of Deposits reaching full disposition; No unresolved or undetermined issues. Amounts remaining for unfound workers ONLY.	Date of final disbursement if zero balance; date of memo to HQLS for unfound workers.	Final Voucher/Memo to HQLS; LR 2000 [FHA Contract Analysis Module, Contract Information Screen, 5 th Tab – Deposit Agreements – Deposit Agreement Cleared Date.]
12) Training	Number of formal training sessions conducted. Does <i>not</i> include “optional” Preconstruction Conferences.	Date of training session.	Copy of attendance sheet; agenda; LR 2000 [Outgoing correspondence – “TR” (training) document type.]
D. Other Items (All Programs)			
1) Restitution Number	Number of workers to whom restitution was made as a result of HUD review or investigation.	Date evidence of employee(s) received restitution is logged to LR 2000; e.g., certified correction payroll reporting payments made by employer.	Copy of certified correction payroll; LR 2000 [Wage Restitution Module – Number of Workers and Restitution Date.]

Item	Criteria	Timing	Source Document
2) Restitution Amount	Total <i>gross amount</i> of restitution paid to workers. Include DBRA and HUD-determined wages.	Same as above.	Same as above; LR 2000 [Wage Restitution Module – Restitution Amount.]
3) CWHSSA Restitution	Total <i>gross amount</i> of CWHSSA overtime restitution paid to workers.	Same as above.	Same as above; LR 2000 [Wage Restitution Module – Restitution Date and CWHSSA Amount.]
4) CWHSSA Liquidated Damages	Total amount of CWHSSA liquidated damages collected.	Date evidence of liquidated damages collection is received/logged to LR 2000.	Same as above; LR 2000 [Wage Restitution Module – Restitution Date and CWHSSA amount.]
5) Investigations Opened	Number of investigations opened by Labor Standards staff involving DBA, DBRA, CWHSSA, or HUD-determined wages. Count by Employer not employee or complainant. NOTE: Project reviews are <i>not</i> investigations. <i>Investigations</i> are concerned with specific allegations of violation, normally involve falsification on the part of the employer to conceal violations and are much more thorough than project reviews. Complaints of a general, nonspecific nature do not rise to the level of investigation.	Date of synopsis to HQLR; case number assigned by Deputy Director.	Copy of synopsis; LR 2000 [Outgoing correspondence – “IV” document type, must include agency ID number. Investigation Module – Date Investigation Opened.] Note: Investigations are opened only by Deputy Director.

Item	Criteria	Timing	Source Document
6) Investigations Closed	Number of investigations completed by Labor Standards staff. Count by Employer.	Date of written determination of wages (or no wages) due.	Copy of determination; LR 2000 [Investigation Module – Date Investigation Closed.] Note: Enter to LR 2000 wage restitution amounts determined due (if any). Actual wage restitution paid is recorded in Wage Restitution Module.
7) §5.7 Enforcement Reports	Number of §5.7 Enforcement Reports prepared by Labor Standards staff.	Date of report to DOL; if through HQLS, date sent to DOL by HQLS.	Copy of report; LR 2000 [Outgoing correspondence – “ER” document type, must include agency ID number.
8) Referrals for hearing and/or debarment.	Number of cases (employers) referred for §5.11 hearing and/or §5.12 debarment.	Date of HQLS transmittal to DOL.	Copy of report; LR 2000 [Outgoing correspondence – “HD” (hearing/debarment) document type, must include agency ID number.

HUD Davis-Bacon Related Acts

As discussed in Chapter 2 of this Handbook, the labor standards provisions contained in the HUD Davis-Bacon Related Acts contain language effecting whether and to what extent prevailing wage requirements are applicable. The language of these Acts differs meaning that HUD Davis-Bacon and Labor Standards (DBLS) staff must be familiar with the statutory provision, HUD interpretations of the language and HUD policy concerning applicability developed from those interpretations. The following are excerpts from HUD Related Act labor standards provisions for major programs. A comprehensive listing of covered programs under these Acts, *Davis-Bacon Coverage of Major HUD Programs*, is found in Appendix II-2 to this Handbook. Appendix II-2 provides a list of programs under each major program office, the statutory and regulatory references, contract forms, and notes concerning exceptions and/or exclusions to coverage. More detailed explanations of factors of applicability for CDBG, HOME, and Public and Indian/Hawaiian housing are found in Appendix II-5.

A. National Housing Act, (FHA Multifamily Housing Insurance)

Statutory Provision: Section 212:

(a) The Secretary shall not insure under section 207 or section 210 of this title, or under section 608 of title VI, pursuant to any application for insurance filed subsequent to the effective date of this section, or under section 213 of this title, or under title VII pursuant to any application filed subsequent to sixty days after the date of the enactment of the Housing Act of 1950, or under section 803 or 810 of title VIII, or under section 908 of title IX, a mortgage or investment which covers property on which there is or is to be located a dwelling or dwellings, or a housing project, the construction of which was or is to be commenced subsequent to such date, unless the principal contractor files a certificate or certificates (at such times, in course of construction or otherwise, as the Secretary may prescribe) certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or the housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), prior to the beginning of construction and after the date of the filing of the application for insurance. The provisions of this section shall also apply to the insurance of any loan or mortgage under section 220 or section 233 which covers property on which there is located a dwelling or dwellings designed principally for residential use for twelve or more families. The provisions of this section shall apply to the insurance under section 221 of any mortgage described in subsection (d)(3) or (d)(4) and (deeming the term “construction” as used in the first sentence of this section to mean rehabilitation) of any mortgage described in subsection (h)(1) or section 235(j)(1) which covers property on which there is located a dwelling or dwellings designed principally for residential use for more than eight families; except that compliance with such provisions may be waived by the Secretary—

- (1) with respect to mortgages described in such subsection (d)(3) or (d)(4) in cases or classes or cases where laborers or mechanics (not otherwise employed at anytime in the construction of the project) voluntarily donate their services without compensation for the purpose of lowering their housing costs in a cooperative undertaking the construction, and
- (2) with respect to mortgages described in such subsection (h)(1) or section 235(j)(1), in cases or classes of cases where prospective owners of such dwellings voluntarily donate their services without compensation, or other persons (not otherwise employed at any time in the rehabilitation of the property) voluntarily donate their services without compensation, and the Secretary determines that any amounts saved thereby are fully credited to the nonprofit organization undertaking the rehabilitation.

The provisions of this section shall also apply to the insurance of any mortgage under section 231, 232, or 236 except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time of the project, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association or other organization undertaking the construction. The provisions of this section shall also apply to the insurance of any mortgage under section 234(d). The provisions of this section shall also apply to the insurance of any mortgage under section 242, except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association, or other organization undertaking the construction; and each laborer or mechanic employed on any facility covered by a mortgage insured under section 242 shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be. The provisions of this section all also apply to the insurance of any mortgage under title XI; and each laborer or mechanic employed on any facility covered by a mortgage insured under such title shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be.

(b) The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(c) There is hereby authorized to be appropriated for the remainder of the fiscal year ending June 30, 1939, and for each fiscal year thereafter, a sum sufficient to meet all necessary expenses of the Department of Labor in making the determines provided for in subsection (a).

Note: There are unit thresholds, overtime requirements (separate from what may be required under FLSA or CWHSSA), and volunteer exemptions contained within this language.

B. Housing Act of 1959, (Section 202 Supportive Housing for the Elderly)

Statutory Provision: Section 202(j)(5):

(A) IN GENERAL.—The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than the rates prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act).

(B) EXEMPTION.—Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii)
 - (I) does not receive compensation for such services; or
 - (II) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (iii) is not otherwise employed at any time in the construction work.

C. Cranston-Gonzalez National Affordable Housing Act (NAHA), (Section 811 Supportive Housing for Persons with Disabilities)

Statutory Provision, Section 811(j)(5):

LABOR STANDARDS.—

(A) IN GENERAL.—The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act).

(B) EXEMPTION.—Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii)
 - (I) does not receive compensation for such services; or
 - (II) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (iii) is not otherwise employed at any time in the construction work.

Note: HUD regulations at 24 CFR §891.155(d) exclude group homes for persons with disabilities from labor standards coverage. Group homes are defined in the statute at Sec. 811(k)(1) as follows:

The term “group home” means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities. The Secretary may waive the project size limitation contained in the previous sentence if the applicant demonstrates that local market conditions dictate the development of a larger project. Not more than 1 home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

D. U.S. Housing Act of 1937 (USHA), (Public Housing, Section 8 Housing)

Statutory Provision, Section 12:

(a) Any contract for loans, contributions, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, and predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Subsection (a) and the provisions relating to wages (pursuant to subsection (a)) in any contract for loan, annual contributions, sale, or lease pursuant to this Act, shall not apply to any individual that—

- (1) performs services for which the individual volunteered;
- (2) (A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services;
and
- (3) is not otherwise employed at any time in the construction work.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation, of low-income housing projects. In addition, note that the Davis-Bacon unit threshold in this provision is relevant only to Section 8 projects, and that there is no requirement that HUD funding is involved in the rehabilitation or construction work.

**E. Housing and Community Development Act of 1974 (HCDA),
(CDBG, Section 108 Loan Guarantee, EDI/BEDI)**

Statutory Provision, Section 110:

(a) All laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); *Provided*, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

- (b) Subsection (a) shall not apply to any individual that—
- (1) performs services for which the individual volunteered;
 - (2)(A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services;
and
 - (3) is not otherwise employed at any time in the construction work.

Note: See CDBG Factors of Labor Standards Applicability in Appendix II-5.

**F. HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez
National Affordable Housing Act), (HOME)**

Statutory Provision, Section 286:

Labor

(a) IN GENERAL.—Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a-5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Waiver.—Subsection (a) shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

Note: See HOME Factors of Labor Standards Applicability in Appendix II-5.

G. Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), (IHBG)

Statutory Provision, Section 104(b):

(1) **In general.** Any contract or agreement for assistance, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act of March 3, 1931 (commonly known as the Davis-Bacon Act;...); shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) **Exceptions.** Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this Act, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) **Application of Tribal Laws.** Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian Tribe.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation of affordable housing projects.

H. Housing Assistance for Native Hawaiians (Title VIII of the NAHASDA)

Statutory Provision, Section 805(b):

(1) IN GENERAL. Any contract or agreement for assistance, sale, or lease pursuant to this title shall contain –

- (A) a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and

- all maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved (sic);¹ and
- (B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the “Davis-Bacon Act” (46 Stat. 1494; chapter 411; 40 U.S.C. 276a et seq.) shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

(2) EXCEPTIONS. Paragraph (1) and provisions relating to wages require under paragraph (1) in any contract or agreement for assistance, sale, or lease under this title, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation of low-income housing projects.

¹ Paragraph (A) is quoted directly from the language of the statute, as enacted. However, HUD interprets this language to carry the same meaning as that found at Section 104(b)(1).

Davis-Bacon Act/Copeland “Anti-kickback” Act**Title 40, Subtitle II, Part A, Chapter 31:****SUBCHAPTER IV****§ 3141. Definitions**

In this subchapter, the following definitions apply:

- (1) **Federal government.**— The term “Federal Government” has the same meaning that the term “United States” had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494) (known as the Davis-Bacon Act).
- (2) **Wages, scale of wages, wage rates, minimum wages, and prevailing wages.** The terms “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” include –
 - (A) the basic hourly rate of pay; and
 - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of—
 - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and
 - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

§ 3142. Rate of wages for laborers and mechanics

- (a) **Application.** The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.

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- (b) Based on Prevailing Wage.** The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.
- (c) Stipulations Required in Contract.** Every contract based upon the specifications referred to in subsection (a) must contain stipulations that—
- (1) the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;
 - (2) the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and
 - (3) there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.
- (d) Discharge of Obligation.—** The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section 3141(2)(B)(i) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section 3141(2)(B)(ii) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section 3141(2)(B) of this title.
- (e) Overtime Pay.—** In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section 3141 (2)(A) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section 3141(2)(B) of this title
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actually incurred with respect to the laborer or mechanic or the amount determined under section 3141(2)(B) of this title, but not actually paid.

§ 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

§ 3144. Authority to pay wages and list contractors violating contracts

(a) Payment of Wages.

- (1) In general.** The Secretary of Labor shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.
- (2) Right of action.** If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) List of Contractors Violating Contracts.

- (1) In general.** The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.
- (2) Restriction on awarding contracts.** No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

§ 3145. Regulations governing contractors and subcontractors (formerly Copeland Act provision)

- (a) In General.** The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are

financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.

(b) Application. Section 1001 of title 18 applies to the statements.

§ 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

§ 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of the subchapter during a national emergency.

§ 3148. Application of this subchapter to certain contracts

This subchapter applies to a contract authorized by law that is made without regard to section 6101(b) to (d) of Title 41, or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.

SUBCHAPTER V – VOLUNTEER SERVICES

§ 3161. Purpose

It is the purpose of this subchapter to promote and provide opportunities for individuals who wish to volunteer their services to state or local governments, public agencies, or nonprofit charitable organizations in the construction, repair, or alteration (including painting and decorating) of public buildings and public works that at least partly are financed with federal financial assistance authorized under certain federal programs and that otherwise might not be possible without the use of volunteers.

§ 3162. Waiver for individuals who perform volunteer services

(a) Criteria for Receiving Waiver. The requirement that certain laborers and mechanics be paid in accordance with the wage-setting provisions of subchapter IV of this chapter as set forth in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), and the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) does not apply to an individual:

- (1)** who volunteers to perform a service directly to a state or local government, a public agency, or a public or private nonprofit recipient of federal assistance—
 - (A)** for civic, charitable, or humanitarian reasons;
 - (B)** only for the personal purpose or pleasure of the individual;

- (C) without promise, expectation, or receipt of compensation for services rendered, except as provided in subsection (b); and
 - (D) freely and without pressure or coercion, direct or implied, from any employer;
- (2) whose contribution of service is not for the direct or indirect benefit of any contractor otherwise performing or seeking to perform work on the same project for which the individual is volunteering;
 - (3) who is not employed by and does not provide services to a contractor or subcontractor at any time on the federally assisted or insured project for which the individual is volunteering; and
 - (4) who otherwise is not employed by the same public agency or recipient of federal assistance to perform the same type of services as those for which the individual proposes to volunteer.

(b) Payments.

- (1) **In accordance with regulations.** Volunteers described in subsection (a) who are performing services directly to a state or local government or public agency may receive payments of expenses, reasonable benefits, or a nominal fee only in accordance with regulations the Secretary of Labor prescribes. Volunteers who are performing services directly to a public or private nonprofit entity may not receive those payments.
- (2) **Criteria and content of regulations.** In prescribing the regulations, the Secretary shall consider criteria such as the total amount of payments made (relating to expenses, benefits, or fees) in the context of the economic realities. The regulations shall include provisions that provide that:
 - (A) a payment for an expense may be received by a volunteer for items such as uniform allowances, protective gear and clothing, reimbursement for approximate out-of-pocket expenses, or the cost or expense of meals and transportation;
 - (B) a reasonable benefit may include the inclusion of a volunteer in a group insurance plan (such as a liability, health, life, disability, or worker's compensation plan) or pension plan, or the awarding of a length of service award; and
 - (C) a nominal fee may not be used as a substitute for compensation and may not be connected to productivity.
- (3) **Nominal fee.** The Secretary shall decide what constitutes a nominal fee for purposes of paragraph (2)(C). The decision shall be based on the context of the economic realities of the situation involved.

(c) Economic Reality. In determining whether an expense, benefit, or fee described in subsection (b) may be paid to volunteers in the context of the economic realities of the

particular situation, the Secretary may not permit any expense, benefit, or fee that has the effect of undermining labor standards by creating downward pressure on prevailing wages in the local construction industry.

Title 18, Part I, Chapter 41:

§ 874. Kickbacks from public works employees

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

Contract Work Hours and Safety Standards Act

Title 40, Subtitle II, Part A, Chapter 37:

§ 3701. Definition and application

(a) **Definition.**— In this chapter, the term “Federal Government” has the same meaning that the term “United States” had in the Contract Work Hours and Safety Standards Act (Public Law 87–581, 76 Stat. 357).

(b) **Application.**—

(1) **Contracts.**— This chapter applies to—

- (A) any contract that may require or involve the employment of laborers or mechanics on a public work of the Federal Government, a territory of the United States, or the District of Columbia; and
- (B) any other contract that may require or involve the employment of laborers or mechanics if the contract is one—
 - (i) to which the Government, an agency or instrumentality of the Government, a territory, or the District of Columbia is a party;
 - (ii) which is made for or on behalf of the Government, an agency or instrumentality, a territory, or the District of Columbia; or
 - (iii) which is a contract for work financed at least in part by loans or grants from, or loans insured or guaranteed by, the Government or an agency or instrumentality under any federal law providing wage standards for the work.

(2) **Laborers and mechanics.**— This chapter applies to all laborers and mechanics employed by a contractor or subcontractor in the performance of any part of the work under the contract—

- (A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the United States, a territory, or the District of Columbia; but
- (B) not including an employee employed as a seaman.

(3) **Exceptions.**—

(A) **This chapter.**— This chapter does not apply to—

- (i) a contract for—
 - (I) transportation by land, air, or water;
 - (II) the transmission of intelligence; or
 - (III) the purchase of supplies or materials or articles ordinarily available in the open market;
- (ii) any work required to be done in accordance with the provisions of chapter 65 of title 41; and
- (iii) a contract in an amount that is not greater than \$100,000.

(B) Section 3702.— Section 3702 of this title does not apply to work where the assistance described in paragraph(1)(B)(iii) from the Government or an agency or instrumentality is only a loan guarantee or insurance.

§ 3702. Work hours

(a) Standard Workweek.— The wages of every laborer and mechanic employed by any contractor or subcontractor in the performance of work on a contract described in section [3701](#) of this title shall be computed on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permitted subject to this section. For each workweek in which the laborer or mechanic is so employed, wages include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of 40 hours in the workweek.

(b) Contract Requirements.— A contract described in section [3701](#) of this title, and any obligation of the Federal Government, a territory of the United States, or the District of Columbia in connection with that contract, must provide that—

- (1) a contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any laborer or mechanic, in any workweek in which the laborer or mechanic is employed on that work, to work more than 40 hours in that workweek, except as provided in this chapter; and
- (2) when a violation of clause (1) occurs, the contractor and any subcontractor responsible for the violation are liable—
 - (A) to the affected employee for the employee's unpaid wages; and
 - (B) to the Government, the District of Columbia, or a territory for liquidated damages as provided in the contract.

(c) Liquidated Damages.— Liquidated damages under subsection (b)(2)(B) shall be computed for each individual employed as a laborer or mechanic in violation of this chapter and shall be equal to \$10¹ for each calendar day on which the individual was required or permitted to work in excess of the standard workweek without payment of the overtime wages required by this chapter.

(d) Amounts Withheld To Satisfy Liabilities.— Subject to section [3703](#) of this title, the governmental agency for which the contract work is done or which is providing financial assistance for the work may withhold, or have withheld, from money payable because of work performed by a contractor or subcontractor, amounts administratively determined to be necessary to satisfy the liabilities of the contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

¹ This \$10 amount has subsequently been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74. The Federal Civil Penalties Inflation Adjustment Act, as amended, authorizes agencies to adjust civil penalties through rulemaking. The U.S. Department of Labor's current limit for liquidated damages for violations of CWHSSA can be found at [29 CFR 5.5\(b\)\(2\)](#).

§ 3703. Report of violations and withholding of amounts for unpaid wages and liquidated damages

(a) Reports of Inspectors.— An officer or individual designated as an inspector of the work to be performed under a contract described in section [3701](#) of this title, or to aid in the enforcement or fulfillment of the contract, on observation or after investigation immediately shall report to the proper officer of the Federal Government, a territory of the United States, or the District of Columbia all violations of this chapter occurring in the performance of the work, together with the name of each laborer or mechanic who was required or permitted to work in violation of this chapter and the day the violation occurred.

(b) Withholding Amounts.—

(1) Determining amount.— The amount of unpaid wages and liquidated damages owing under this chapter shall be determined administratively.

(2) Amount directed to be withheld.— The officer or individual whose duty it is to approve the payment of money by the Government, territory, or District of Columbia in connection with the performance of the contract work shall direct the amount of—

(A) liquidated damages to be withheld for the use and benefit of the Government, territory, or District; and

(B) unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under this chapter.

(3) Payment.— The Secretary of Labor shall pay the amount administratively determined to be due directly to the laborers and mechanics from amounts withheld on account of underpayments of wages if the amount withheld is adequate. If the amount withheld is not adequate, the Secretary of Labor shall pay an equitable proportion of the amount due.

(c) Right of Action and Intervention Against Contractors and Sureties.— If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this chapter, the laborers and mechanics, in the case of a department or agency of the Government, have the same right of action and intervention against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(d) Review Process.—

(1) Time limit for appeal.— Within 60 days after an amount is withheld as liquidated damages, any contractor or subcontractor aggrieved by the withholding may appeal to the head of the agency of the Government or territory for which the contract work is done or which is providing financial assistance for the work, or to the Mayor of the District of Columbia in the case of liquidated damages withheld for the use and benefit of the District.

(2) Review by agency head or mayor.— The agency head or Mayor may review the administrative determination of liquidated damages. The agency head or Mayor may issue a final order affirming the determination or may recommend to the Secretary of Labor that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for the liquidated damages, if it is found that the amount is incorrect or that the contractor or subcontractor violated this chapter inadvertently, notwithstanding the exercise of due care by the contractor or subcontractor and the agents of the contractor or subcontractor.

(3) Review by secretary.— The Secretary shall review all pertinent facts in the matter and may conduct any investigation the Secretary considers necessary in order to affirm or reject the recommendation. The decision of the Secretary is final.

(4) Judicial action.— A contractor or subcontractor aggrieved by a final order for the withholding of liquidated damages may file a claim in the United States Court of Federal Claims within 60 days after the final order. A final order of the agency head, Mayor, or Secretary is conclusive with respect to findings of fact if supported by substantial evidence.

(e) Applicability of Other Laws.—

(1) Reorganization plan.— Reorganization Plan Numbered 14 of 1950 (eff. May 24, 1950, [64 Stat. 1267](#)) applies to this chapter.

(2) Section 3145.— Section [3145](#) of this title applies to contractors and subcontractors referred to in section [3145](#) who are engaged in the performance of contracts subject to this chapter.

§ 3704. Health and safety standards in building trades and construction industry

(a) Condition of Contracts.—

(1) In general.— Each contract in an amount greater than \$100,000 that is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (eff. May 24, 1950, [64 Stat. 1267](#)) and is for construction, alteration, and repair, including painting and decorating, must provide that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety, as established under construction safety and health standards the Secretary of Labor prescribes by regulation based on proceedings pursuant to section [553](#) of title [5](#), provided that the proceedings include a hearing similar in nature to that authorized by section [553](#) of title [5](#).

(2) Consultation.— In formulating standards under this section, the Secretary shall consult with the Advisory Committee created by subsection (d).

(b) Compliance.—

(1) Actions to gain compliance.— The Secretary may make inspections, hold hearings, issue orders, and make decisions based on findings of fact as the Secretary considers necessary to gain compliance with this section and any health and safety standard the Secretary prescribes under subsection (a). For those purposes the Secretary and the United States district courts have the authority and jurisdiction provided by sections 6506 and 6507 of title 41.

(2) Remedy when noncompliance found.— When the Secretary, after an opportunity for an adjudicatory hearing by the Secretary, establishes noncompliance under this section of any condition of a contract described in—

(A) section [3701 \(b\)\(1\)\(B\)\(i\)](#) or (ii) of this title, the governmental agency for which the contract work is done may cancel the contract and make other contracts for the completion of the contract work, charging any additional cost to the original contractor; or

(B) section [3701 \(b\)\(1\)\(B\)\(iii\)](#) of this title, the governmental agency which is providing the financial guarantee, assistance, or insurance for the contract work may withhold the guarantee, assistance, or insurance attributable to the performance of the contract.

(3) Nonapplicability.— Section [3703](#) of this title does not apply to the enforcement of this section.

(c) Repeated Violations.—

(1) Transmittal of names of repeat violators to comptroller general.— When the Secretary, after an opportunity for an agency hearing, decides on the record that, by repeated willful or grossly negligent violations of this chapter, a contractor or subcontractor has demonstrated that subsection (b) is not effective to protect the safety and health of the employees of the contractor or subcontractor, the Secretary shall make a finding to that effect and, not sooner than 30 days after giving notice of the finding to all interested persons, shall transmit the name of the contractor or subcontractor to the Comptroller General.

(2) Ban on awarding contracts.— The Comptroller General shall distribute each name transmitted under paragraph (1) to all agencies of the Federal Government. Unless the Secretary otherwise recommends, the contractor, subcontractor, or any person in which the contractor or subcontractor has a substantial interest may not be awarded a contract subject to this section until three years have elapsed from the date the name is transmitted to the Comptroller General. The Secretary shall terminate the ban if, before the end of the three-year period, the Secretary, after affording interested persons due notice and an opportunity for a hearing, is satisfied that a contractor or subcontractor whose name was transmitted to the Comptroller General will comply responsibly with the requirements of this section. The Comptroller General shall inform all Government agencies after being informed of the Secretary's action.

(3) Judicial review.— A person aggrieved by the Secretary’s action under this subsection or subsection (b) may file with the appropriate United States court of appeals a petition for review of the Secretary’s action within 60 days after receiving notice of the Secretary’s action. The clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary then shall file with the court the record on which the action is based. The findings of fact by the Secretary, if supported by substantial evidence, are final. The court may enter a decree enforcing, modifying, modifying and enforcing, or setting aside any part of, the order of the Secretary or the appropriate Government agency. The judgment of the court may be reviewed by the Supreme Court as provided in section [1254](#) of title [28](#).

(d) Advisory Committee on Construction Safety and Health.—

(1) Establishment.— There is an Advisory Committee on Construction Safety and Health in the Department of Labor.

(2) Composition.— The Committee is composed of nine members appointed by the Secretary, without regard to chapter [33](#) of title [5](#), as follows:

(A) Three members shall be individuals representative of contractors to whom this section applies.

(B) Three members shall be individuals representative of employees primarily in the building trades and construction industry engaged in carrying out contracts to which this section applies.

(C) Three members shall be public representatives who shall be selected on the basis of their professional and technical competence and experience in the construction health and safety field.

(3) Chairman.— The Secretary shall appoint one member as Chairman.

(4) Duties.— The Committee shall advise the Secretary—

(A) in formulating construction safety and health standards and other regulations; and

(B) on policy matters arising in carrying out this section.

(5) Experts and consultants.— The Secretary may appoint special advisory and technical experts or consultants as may be necessary to carry out the functions of the Committee.

(6) Compensation and expenses.— Committee members are entitled to receive compensation at rates the Secretary fixes, but not more than \$100 a day, including travel time, when performing Committee business, and expenses under section [5703](#) of title [5](#).

§ 3705. Safety programs

The Secretary of Labor shall—

- (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employment covered by this chapter; and
- (2) collect reports and data and consult with and advise employers as to the best means of preventing injuries.

§ 3706. Limitations, variations, tolerances, and exemptions

The Secretary of Labor may provide reasonable limitations to, and may prescribe regulations allowing reasonable variations to, tolerances from, and exemptions from, this chapter that the Secretary may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Federal Government business.

§ 3707. Contractor certification or contract clause in acquisition of commercial items not required

In a contract to acquire a commercial product (as defined in section 103 of title 41) or a commercial service (as defined in section 103a of title 41), a certification by a contractor or a contract clause may not be required to implement a prohibition or requirement in this chapter.

§ 3708. Criminal penalties

A contractor or subcontractor having a duty to employ, direct, or control a laborer or mechanic employed in the performance of work contemplated by a contract to which this chapter applies that intentionally violates this chapter shall be fined under title 18, imprisoned for not more than six months, or both.

Federal Labor Standards Coverage in Major HUD Programs

A. HOUSING.

1. FHA non-single family mortgage insurance under the National Housing Act: Secs. 207; 213; 220; 221(d)(3), (d)(4), and (h)(1); 231; 232; 233; 234(d); 241 (supplemental loans only); and 242.

- a. **Statute:** Sec. 212 of the National Housing Act (for all programs except Sec. 241); Sec. 241(b)(5) (for Sec. 241 supplemental loans).
- b. **Regulation:** §200.33; §241.645 for supplemental energy loans in non-insured projects.
- c. **Contract Form:** HUD-92554M (*formerly HUD-2554*). See also references to the HUD-92554M in the MAP Guide, Secs. 5.5.1, 5.6.3, 5.7.3, 5.8.3, 5.8.6, 12.2.1, 12.16, 19.2.2.2, 19.5.5.2, 19.6.5.3, A.5.4.1, and A.5.4.2 (March 2021).

d. **Notes:**

- (1) **Threshold:** DB applicability threshold for Sec. 220 and Sec. 233 is dwellings designed for 12 or more families. Threshold for Sec. 235(h)(1) is dwelling designed for 8 or more families. No threshold for Sec. 221(d)(3) and (d)(4).

Section 241 supplemental loans: are subject to DB only if the original mortgage was covered by DB – see §200.33(a)(2). [HUD regulations (§241.645) also require DB on supplemental loans for energy related purposes in non-insured projects; however, this program has not been implemented].

- (2) **Overtime:** CWHSSA overtime provisions do not apply where no assistance other than mortgage insurance is given; however, under Sec. 212 of the National Housing Act, Sec. 242 workers must receive time-and-a-half overtime after 8 hours per day or 40 hours per week.
- (3) **Volunteers:** The Secretary may waive DB for volunteers in certain cases under Secs. 221(d)(3) and (d)(4), 221(h)(1), 231, 232, 236 and 242.
- (4) **Section 242:** The HUD Office of Insured Healthcare Facilities is responsible for labor standards administration and enforcement relating to projects insured under Section 242.

2. Section 202 Supportive Housing for the Elderly

- a. **Statute:** Sec. 202(j)(5) of the Housing Act of 1959
- b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).

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- c. **Contract Form:** HUD-92554M
 - d. **Notes:**
 - (1) Threshold: DB applies to construction of housing with 12 or more assisted units.
 - (2) Volunteers: Exempt.
3. **Assisted Living Conversion Program (ALCP) for Sec. 202 Projects**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively through language in Notices of Funding Availability (NOFAs).
 - b. **Regulation:** See relevant NOFA.
 - c. **Notes:** NOFAs apply DB and CWHSSA overtime requirements where the total cost of physical conversion to an Assisted Living Facility (ALF) (and including any additional renovation work undertaken at the same time) is \$500,000 or more (including ALCP grant funds, owner funds, or third party funds ...) and in which the ALF portion of the project is 12 units or more.
4. **Sec. 811 Supportive Housing for Persons with Disabilities**
- a. **Statute:** Sec. 811(j)(5) of the Cranston-Gonzalez National Affordable Housing Act.
 - b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).
 - c. **Contract Form:** HUD-92554M
 - d. **Notes:**
 - (1) Threshold: DB applies to construction of housing with 12 or more assisted units. A group home for persons with disabilities is not covered by DB (see §891.155(d)(1)).
 - (2) Volunteers: Exempt.
5. **Housing Finance Agency Risk-Sharing Program for insured affordable multifamily project loans (Sec. 542(c) of the HCD Act of 1992)**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
 - b. **Regulation:** §266.225; see also §§266.210(d) and 266.215(b).
 - c. **Notes:**
 - (1) Threshold: Under §266.225, DB applies if:
 - (i) advances are insured;
 - (ii) the project involves new construction or substantial rehabilitation; and,
 - (iii) the project will contain 12 or more units.
 - (2) Volunteers: Regulatory exemption for volunteers.
 - (3) Delegation: HUD may delegate to the HFA routine DB administration and enforcement functions.
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6. Assisted Housing Drug Elimination Program

- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
- b. **Regulation:** §761.40(a)
- c. **Notes:**
 - (1) HUD wage rates: The regulation also mentions HUD-determined prevailing wage rates for non-routine maintenance. This provision applies to the public housing component only, not to non-public assisted or insured housing.
 - (2) Volunteers: Exempt.

7. Property Disposition: Up-Front Grants

- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed in Grant Agreement.
- b. **Regulation:** No Davis-Bacon requirement in regulation; see Article XIII of Sample Up-Front Grant Agreement.

8. Property Disposition – Section 8 Project-based Assistance

- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:** §886.313(c)(2)
- c. **Notes:**
 - (1) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
 - (2) Volunteers: Exempt.

9. Repairs on HUD-Owned and HUD-MIP Property

- a. **Statute:** The Davis-Bacon Act (applies to direct Federal contracts in excess of \$2,000 for construction, alteration, and/or repair).

10. Housing Programs Not Covered

- a. Single family FHA mortgage insurance programs.
- b. Sec. 223(f) mortgage insurance for refinancing (in general).
- c. Sec. 8 contract renewals under Mark-to-Market program without new FHA mortgage insurance.

B. PUBLIC HOUSING**1. Public Housing, including HOPE VI beginning in FY 2000**

- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:**
 - (1) Modernization and mixed finance-- §905.308(b)(3)
 - (2) Preemption of higher State or local prevailing wage rates on development, maintenance and modernization (PHA projects) -- §965.101

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- c. **Contract Forms:** HUD-5370 (Construction contracts >\$150,000, see Clauses 46 and 47); HUD-5370-EZ (Construction contracts \$2,000 - \$150,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II).
 - d. **Notes:**
 - (1) Davis-Bacon - DB rates apply to public housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to public housing maintenance work (including “nonroutine maintenance”, as defined in §905.200(b)(5)).
 - (3) Force Account - DB and HUD wage rates apply to PHA employees (“force account” workers) as well as to contractor employees.
 - (4) Threshold: No unit threshold for DB or HUD wage rate applicability to public housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (5) Preemption: Prevailing rates determined under State law that are higher than applicable DB or HUD-determined rates are inapplicable and may not be enforced. But PHA may choose to pay higher rates or bargain with unions to pay higher rates. See §965.101.
 - (6) Volunteers: Exempt.
2. **Section 8 Housing**
- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
 - b. **Regulation:** For tenant-based assistance that is project-based by a PHA: §983.154(b); see also §983.155 (evidence of completion). See also Sec. 8 SRO regulations below, §882.804(e), applicable to McKinney Act SRO programs administered by CPD.
 - c. **Contract Form:** HUD-52531-B (Part II of the Agreement to Enter Into Housing Assistance Payments Contract) -- see Sections 2.4 and 2.8.
 - d. **Notes:**
 - (1) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
 - (2) Volunteers: Exempt.
3. **Public Housing Drug Elimination Program**
- a. **Statute:** No Davis-Bacon provisions under the Public and Assisted Housing Drug Elimination Act of 1990; however, Davis-Bacon or HUD-determined wage rates apply to public housing under Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
 - b. **Regulation:** §761.40(a)
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- c. **Notes:** DB applies to physical improvements *except* that HUD-determined wage rates apply to non-routine maintenance on public housing.

C. COMMUNITY PLANNING AND DEVELOPMENT

1. CDBG/NSP/Sec. 108/EDI/BEDI

- a. **Statute:** Sec. 110 of Housing and Community Development Act of 1974.
- b. **Regulation:** §570.603; see also §570.200(c)(3) (public improvements not initially assisted with CDBG)
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** DB applies only when construction work is financed in whole or in part with Title I assistance (i.e., CDBG/Sec. 108 loan guarantee/EDI/BEDI). Examples: Financing includes use of Title I assistance in permanent take-out loan, where Title I loan is known or contemplated when construction financing is arranged. Financing includes use of Title I assistance to pay principal or pay or subsidize interest on construction loan. Use of Title I assistance solely for non-construction expenses -- e.g., purchase of land, architect and engineering fees -- does not trigger DB.
 - (1) Threshold: DB is applicable to residential property containing 8 or more units. Mixed-use property containing less than 8 units is covered unless entire rehab is clearly limited to residential portion.
 - (2) Volunteers: Exempt.

2. HOME

- a. **Statute:** Sec. 286 of the HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act).
- b. **Regulation:** §92.354
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** Unlike CDBG, DB is triggered regardless of whether HOME assistance finances construction or non-construction expenses (e.g., purchase of land).
 - (1) Threshold: DB is applicable to contracts for the construction of affordable housing with 12 or more HOME-assisted units. Applicability depends on how many HOME-assisted units are under the contract; not how many units are in the HOME project.
 - (2) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.
 - (3) Volunteers: Exempt.

3. **McKinney Act SRO Provisions**

a. **Section 8 assistance for SRO dwellings under Title IV, Subtitle E of the McKinney-Vento Homeless Assistance Act (formerly Stewart B. McKinney Homeless Assistance Act)**

- (1) **Statute:** no statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
- (2) **Regulation:** §882.804(e)
- (3) **Contract Form:** HUD-52538-B, Part II of Agreement to Enter Into Housing Assistance Payments Contract (Sec. 8 Moderate Rehab Program), see Clause 2.3.
- (4) **Notes:**
 - (i) **Threshold:** DB is applicable to projects with 9 or more Section 8-assisted units.
 - (ii) **Volunteers:** Exempt.

b. **Shelter Plus Care component for moderate rehabilitation for SROs under former Title IV, Subtitle F of the McKinney-Vento Homeless Assistance Act.**

- (1) **Statute:** No statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
- (2) **Regulation:** §882.804(e), which is made applicable by Shelter Plus Care regulations in §582.100(d)(5)
- (3) **Contract Form:** Contact SNAPS; there is a contract form but it does not have a form number.
- (4) **Notes:**
 - (i) **Threshold:** DB is applicable to projects with 9 or more Section 8-assisted units.
 - (ii) **Volunteers:** Exempt.

4. **Loan Guarantee Recovery Fund (Church Arson)**

- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon imposed administratively.
- b. **Regulation:** §573.9(d)
- c. **Notes:**
 - (1) **Threshold:** DB is applicable to the rehabilitation of residential property only if the property contains 8 or more units.
 - (2) **Volunteers:** Exempt.

5. **CPD Programs Not Covered**

- a. Housing Opportunities for Persons with AIDS (HOPWA)

- b. McKinney Act programs other than SRO moderate rehab, i.e., Emergency Solutions Grants, Supportive Housing, Shelter Plus Care other than SRO
- c. Rural Housing and Economic Development Assistance
- d. Self-Help Homeownership Opportunity Program (SHOP)
- e. Economic Development Initiative/Special Purpose (EDISP) Grants funded in appropriations acts

D. **NATIVE AMERICAN PROGRAMS**

1. **Indian Housing Block Grants (IHBG) under NAHASDA**

- a. **Statute:** Sec. 104(b) of NAHASDA, as amended.
- b. **Regulation:** § 1000.16
- c. **Contract Forms:** HUD-5370 (Construction contracts >\$150,000, see Clauses 46 and 47); HUD-5370-EZ (Construction contracts \$2,000 - \$150,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II). Note: Clauses for inapplicability of higher State or tribal wage rates should be deleted; it does not apply to NAHASDA programs).
- d. **Notes:**
 - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
 - (3) Force Account - DB and HUD wage rates apply to TDHE employees (“force account” workers) as well as to contractor employees.
 - (4) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.
 - (5) Tribally determined Prevailing Wage Rates: Exclusion from DB and HUD rates for contracts or agreements covered by laws or regulations adopted by an Indian tribe that require payment of not less than prevailing wages as determined by the Indian tribe.
 - (6) Threshold: No unit threshold for DB applicability to IHBG assisted housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (7) Volunteers: Exempt.
 - (8) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.

2. Housing Assistance for Native Hawaiians under Title VIII of NAHASDA

- a. **Statute:** Sec. 805(b) of NAHASDA
- b. **Regulations:** §1006.345
- c. **Notes:**
 - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
 - (3) Force Account - DB and HUD wage rates apply to Department of Hawaiian Home Lands employees (“force account” workers) as well as to contractor employees.
 - (4) Threshold: No unit threshold for DB applicability to Native Hawaiian housing assistance. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (5) Volunteers: Exempt.

3. ONAP Programs Not Covered

- a. Indian CDBG (Davis-Bacon waived under statutory authority to waive; see 24 CFR 1003.603)
- b. Sec. 184 Indian housing loan guarantees

Factors of Labor Standards Applicability

The labor standards provisions in HUD program statutes vary considerably and there are significant differences in whether and to what extent prevailing wage requirements are applicable under these programs. This Appendix discusses some of the differences and explains how the language is interpreted for applicability purposes. These sections refer to the specific language in each statutory provision; see Appendix II-1 for the complete text of the statutory provision.

A. Housing and Community Development Act of 1974, Section 110(a) (CDBG, Section 108 Loan Guarantee, EDI/BEDI)

1. ...construction work financed...

CDBG funds (i.e., Title I funds) can be used to finance activities other than “construction work” which uses do not trigger Davis-Bacon requirements. For example, CDBG can finance real property acquisition, purchase of equipment, architectural and engineering fees, other services (e.g., legal, accounting, construction management), and other non-construction items such as furniture, business licenses, real estate taxes, and tenant allowances for such items.

On the other hand, “financing” is not limited to the act of paying for construction work directly. “Financing” can mean, for example, using CDBG assistance to pay the interest charged to reduce the interest rate on a construction loan (including certain collateral accounts). Generally, “financing” also means using CDBG funds to provide permanent financing (take-out loan) following construction.

2. ...in whole or in part...

Notice that the statute seems to anticipate that CDBG funds may be used in conjunction with other funding sources. If CDBG funds are used to finance only a portion of the construction work, labor standards are applicable to the *entire* construction work.

3. All laborers and mechanics employed by contractors and subcontractors...

The covered classes of workers are those employed by “contractors and subcontractors.” Consequently, the labor standards provisions *do not* apply to employees of the grantee (force account workers) who are not employed by contractors or subcontractors but that may be engaged on an otherwise covered project. Note that the construction work is covered but force account workers are excluded.

4. *...shall apply to the rehabilitation of residential property only if such property contains not less than 8 units*

This language represents an exemption for residential property that contains 7 or less units. Although the statute refers to the “rehabilitation” of residential property, this exemption has been interpreted to include the new construction of residential property containing 7 or less units.

Typically, single-family homeowner properties are excluded under this exemption. However, *property* is not limited to a specific building. Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly owned and operated as one rental, cooperative or condominium project.

Examples of 8+ unit properties may include:

- Five townhouse buildings side-by-side which consist of 2 units each.
- Three apartment buildings each consisting of 5 units and located on one tract of land.
- Eight single-family (not homeowner) houses located on contiguous lots.

Further, HUD has concluded that the term “rehabilitation” as used within the statutory language is not meant to preclude new construction from this exemption. The Conference Report on the HCD Act of 1974 indicated that at the time that the statute was written, residential new construction was not an eligible activity. However, subsequent changes to the statute now permit the use of CDBG funds (and other Title I funds) for residential new construction. Accordingly, residential new construction is treated in the same manner as residential rehabilitation for Davis-Bacon purposes.

B. National Affordable Housing Act, Section 286(a) (HOME)

1. *...affordable housing with 12 or more units assisted with funds made available under this subtitle...*

Unlike CDBG, the standard for coverage is *assisted* not financed – which provides for much broader application. This means that Davis-Bacon requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide down payment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2).)

This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, HUD uses the number of units identified as “HOME” units under the program definition whether determined on a pro-rata basis, specific

designation or other means allowable by HUD's Office of Community Planning and Development (CPD).

Note also that once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project other than the assisted units.

2. *Any contract for the construction of affordable housing with 12 or more units assisted with funds...*

Davis-Bacon requirements are applicable to *contracts for construction* covering 12 or more HOME-assisted units. Davis-Bacon does not follow “construction work” or “projects”. This factor has implications in two ways:

- a. First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.)
- b. Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

3. *Sweat Equity.*

HOME provides for a sweat equity program (see NAHA Section 255) which permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

C. U.S. Housing Act of 1937, Section 12(a) (Public Housing)

1. *Any contract for loans, contributions, sale, or lease pursuant to this Act...*

Prevailing wage requirements apply through provisions required in any contract for loans, contributions, sale, or lease.... Generally, the “contract” referenced, here, relates to the Annual Contributions Contract between HUD and the public housing agency. This term (contract) may also relate to an Agreement to Enter Into a Housing Assistance Payments Contract (AHAP) or an Agreement to Enter Into a Project Rental Assistance Contract (APRAC). These Agreements are executed for housing projects that will receive Section 8 rental assistance.

Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or

operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. ***...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...***

Notice that, unlike other HUD labor standards provisions, the USHA makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that “force account” labor – workers employed directly by the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. ***...(Davis-Bacon wage rates) shall be paid...in the development of the project involved (including a project with nine or more units assisted under Section 8 of this Act, where the public housing agency or the Secretary and the builder or the sponsor enter into an agreement for such use ...before construction or rehabilitation is commenced)...***

Notice, also, that the only applicability thresholds pertain to Section 8 projects: there must be 9 or more Section 8-assisted units *and* there must be an agreement for the Section 8 assistance before construction begins. These agreements are referred to as AHAPs and/or APRACs. The 9-unit threshold refers to the number of units in the project that are Section 8-assisted, not to the total number of units in the project. The USHA contains no unit threshold for public housing.

While the USHA does not contain a dollar threshold, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

D. Native American Housing Assistance and Self-Determination Act of 1996, Section 104(b), (Indian Housing)

1. ***Any contract or agreement for assistance, sale, or lease pursuant to this Act...***

Similar to the USHA (public housing), prevailing wage requirements apply through provisions required in any contract or agreement for assistance, sale, or lease.... Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. ***...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...***

Again, NAHASDA mirrors the USHA in that it makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that “force account” labor – workers employed directly by the agency, whether on a full-time, part-time, permanent, or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. ***Threshold.***

NAHASDA contains no dollar or number of units threshold. However, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

4. ***(HUD-determined and/or Davis-Bacon and wage provisions) shall not apply to any contract ..., if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian Tribe...***

This provision allows for the preemption of Federally determined (HUD-determined and/or Davis-Bacon) wage rates where a Tribe has determined prevailing wage rates for operations and/or development work. Note that the tribal determination must be of rates that “prevail”¹ and the tribal law or regulation must be applicable to the work in question. (See also ONAP Program Guidance 2003-04, dated 2/4/2003.)

5. ***Sweat Equity.***

HUD has concluded that, consistent with a provision in the USHA (predecessor to NAHASDA), family members providing sweat equity labor for construction or rehabilitation of a home assisted under NAHASDA are excluded from prevailing wage (HUD-determined and/or Davis-Bacon) coverage. *Sweat equity* means members of an eligible family may contribute labor toward the development of a homeownership project. These sweat equity participants are not covered by prevailing wage requirements. (See also, ONAP Program Guidance 2003-03, dated 2/4/2003.)

¹ HUD has not defined “prevailing” for the purposes of tribally determined wage rates. HUD, also, has not prescribed policies or procedures for the administration or enforcement of such tribal rates. HUD defers to each Tribe to establish the definitions, parameters and methodology for the determination, administration and enforcement of tribally determined prevailing wage rates.

E. Native American Housing Assistance and Self-Determination Act of 1996, Section 805(b), (Hawaiian Homelands)

1. *Any contract or agreement for assistance, sale, or lease pursuant to this Act...*

Similar to the USHA (public housing), prevailing wage requirements apply through provisions required in any contract or agreement for assistance, sale, or lease.... Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. *...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development and all maintenance, and laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...*

Again, NAHASDA mirrors the USHA in that it makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that “force account” labor – workers employed directly by the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. *Threshold.*

NAHASDA contains no dollar or number of units threshold. However, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

4. *Sweat Equity.*

HUD has concluded that, consistent with a provision in the USHA (predecessor to NAHASDA), family members providing sweat equity labor for construction or rehabilitation of a home assisted under NAHASDA are excluded from prevailing wage (HUD-determined and/or Davis-Bacon) coverage. *Sweat equity* means members of an eligible family may contribute labor toward the development of a homeownership project. These sweat equity participants are not covered by prevailing wage requirements. (See also, *ONAP Program Guidance 2003-03, dated 2/4/2003.*)

HUD's Willful Violation/Falsification Indicators

As discussed in Chapter 5, LSS/LCA perform “spot-checks” of certified payroll reports (CPRs) and related documents in order to monitor the compliance status of employers engaged on projects covered by prevailing wage requirements. Spot-checks are intended to disclose obvious, face-of-the-record violations and, more importantly, to detect evidence of willful violations and payroll falsification.

In many of the more egregious noncompliance cases, the violating employer will attempt to conceal underpayments on payroll reports by falsifying the data. HUD has chosen to focus particularly on falsification because such conduct by employers, generally, involves substantial amounts of wage underpayments and may lead to debarment, and criminal prosecution or fines for willful violations and/or making false statements.

The following indicators describe patterns that suggest the payroll data have been falsified to conceal willful violations. Other willful violations may *not* involve what appears on CPRs but, rather, what is *not* reported on CPRs. These are also described in this appendix.

A. Falsification appearing on CPRs.

1. **Ratio of laborers to mechanics.** Except for concrete, landscaping and similar trades, the ratio of laborers to mechanics should not exceed 1:1. A higher ratio of laborers to mechanics normally indicates misclassification. That is, the workers classified and paid as laborers are, instead, performing the work of a mechanic which requires a wage higher than that of a laborer. Therefore, these workers are underpaid. The false information on the CPR may be limited to the classification of work.
2. **Too few or irregular hours.** Most workers are employed on a regular 40 hour per week basis. CPRs that consistently reflect less than 40 hours per week for all or certain groups of employees, or that reflect erratic work schedules (e.g., the crew works only a few hours per day scattered throughout the work week), indicate that the hours may have been reduced to give the appearance of compliance. The falsification in these cases may be limited to the hours worked.
3. **Discrepancies in wage computations.** CPRs that reflect frequent discrepancies in wage computations, e.g., gross wage payments in round numbers (\$400/week) computed from an uneven hourly wage rate (\$15.67/hour), indicate that the employees may be working on a piece rate basis, or at an even (e.g., \$15/hour) wage rate. Here, the falsification may involve the hours worked, the rate of pay, or both.
4. **Extraordinary deductions.** Unexplained or unusually high deductions may indicate that employees are being required to kick-back a portion of their

earnings. While this would indicate willful violations, it does not necessarily indicate falsification. The information on the CPR may otherwise be accurate.

B. **Willful violations that do not appear on CPRs.**

1. **Compliance excess.** Some violating employers attempt to “boost” their compliance factor by submitting “labor releases” and other documents that are not required or requested. Such documents, offered without request, suggest that the employer may be attempting to distract the compliance officer (LSS/LCA) from actual violations.
2. **“Ghost” workers.** In some instances, employees are working on the project, but these employees do not appear on the CPRs at all. In these cases, the employer may carry a core group of employees that is reported on the CPR. But the employer also has a second group of employees, perhaps day-workers or other temporary employees, and this second group of employees doesn’t appear on CPRs at all. The core group may be permanent employees; they are usually paid more than the temporary employees. The second group of employees is underpaid but, because the second group does not appear on the CPRs, they are “invisible” to the compliance officer (LSS/LCA). The compliance officer can’t assess compliance with labor standards with respect to the “ghost” workers.
3. **Willful violation payment schemes.** In some cases, worker or other complaints may be the only way that some willful violations are revealed. Examples of willful underpayment schemes that will not appear on a CPR include:
 1. **Wages paid in cash.** Employers may attempt to conceal underpayments by making wage payments in cash. It does not matter what is reported on the CPR, the cash in the pay envelope is less than what is reported and required.
 2. **Employer “cashes” paychecks.** Employers may issue payroll checks but the employer will require employees to endorse/turnover the paycheck to the employer in exchange for a lesser amount in cash.
 3. **Employer facilitates employee “cashing” of paychecks.** Employers may issue payroll checks and take action to ensure that the checks are processed (cashed) through the bank. In such cases, the employer instructs the employees to cash the paychecks and then requires the employees to kick-back a portion of the check proceeds to the employer in cash.

Sample Deposit Schedule**Deposit Schedule**

Page 1 of 2

Project: Project Name
 Project Number
 Project Location

Depositor: Depositor Name
 Street Address
 Location

Employer: Subcontractor/Employer Name (Alphabetical Order) – Deposit Purpose 3, 4

Employee	DBRA Due	CWHSSA Due	Total Due
Employee Name (Alphabetical Order)	\$2,003.98	\$17.96	\$2,021.94
Employee Name	\$26.20	\$0.00	\$ 26.20
CWHSSA Liquidated Damages		\$20.00	\$ 20.00
Sub-Total	\$2,030.18	\$ 37.96	\$2,068.14

Employer: Subcontractor/Employer Name – Deposit Purpose 1, 4

Employee	DBRA Due	CWHSSA Due	Total Due
Employee Name (Alphabetical Order)	\$1,913.26	\$142.16	\$2,055.42
Employee Name	\$985.25	\$48.16	\$1,033.41
Employee Name	\$591.52	\$0.00	\$ 591.52
CWHSSA Liquidated Damages		\$60.00	\$ 60.00
Sub-Total	\$3,490.03	\$ 250.32	\$3,740.35

Deposit Schedule

Page 2 of 2

Project: Project Name
 Project Number
 Project Location

Depositor: Depositor Name
 Street Address
 Location

Employer: Subcontractor/Employer Name – Deposit Purpose 2

Pending completion of DOL investigation	\$135,000.00
Sub-Total	\$135,000.00

Employer	DBRA	CWHSSA Due	Total Due
Subcontractor/Employer Name (Alphabetical Order)	\$2,030.18	\$37.96	\$2,068.14
Subcontractor/Employer Name	\$3,490.43	\$250.32	\$3,740.75
Subcontractor/Employer Name	\$135,000.00	\$0.00	\$135,000.00
Grand Total	\$140,520.61	\$ 288.28	\$140,808.89

Sample Wage Restitution Payment Notice

Date

Name

Street Address

City, State, Zip

Dear Name:

Subject: Wage restitution for work performed

Project: Name

FHA Number

City, County, State

Our office has ordered a wage restitution payment for you. Depending on the payment method you requested, you will receive either a check by mail or an electronic payment to the bank account you specified. This payment represents the gross amount of back wages due for work performed on the above listed project. We have not withheld any taxes from this payment. It is your responsibility and your employer's responsibility to fulfill tax obligations with the Internal Revenue Service.

A form 1099 will be mailed to you after the end of this calendar year at the address you provided. It will reflect the wages you earned. You **must** inform the HUD Office of Davis-Bacon and Labor Standards of any change to your mailing address between now and January of next year (20XX) so that we ensure that the form 1099 is sent to your current address.

If you have any questions, please contact me at (XXX) XXX-XXXX or by e-mail at XXX@hud.gov.

Sincerely,

Name

Labor Standards Specialist

Unfound Worker Schedule**Page 1 of 2**

Project: Project Name
 Project Number
 Project Location

Depositor: Depositor Name
 Street Address
 Location

Employer: Subcontractor/Employer Name (Alphabetical Order)

Employee	DBRA	CWHSSA	Total Due
Employee Name (Alphabetical Order)	\$632.48		\$632.48
Employee Name	\$589.74		\$589.74
Employee Name	\$58.94		\$58.94
Employee Name	\$826.47		\$826.47
Sub-Total	\$2,107.63	\$ 0.00	\$2,107.63

Employer: Subcontractor/Employer Name (Alphabetical Order)

Employee	DBRA	CWHSSA	Total Due
Employee Name (Alphabetical Order)	\$1,413.26	\$142.16	\$1,555.42
Employee Name	\$985.25	\$	\$ 985.25
Sub-Total	\$2,398.51	\$ 142.16	\$2,540.67

Unfound Worker Schedule**Page 2 of 2**

Project: Any Project Name
Any project Number
Any Project Location

Depositor: Depositor Name
Street Address
Location

Employer: Subcontractor/Employer Name

Employee	DBRA	CWHSSA	Total Due
Employee Name (Alphabetical Order)	\$122.56		\$ 122.56
Employee Name	\$30.59		\$ 30.59
Employee Name	\$67.52		\$ 67.52
Sub-Total	\$ 220.67	\$ 0.00	\$ 220.67

Employer	DBRA	CWHSSA	Total Due
Subcontractor/Employer Name (Alpha Order)	\$2,107.63		\$2,107.63
Subcontractor/Employer Name	\$2,398.51	\$142.16	\$2,540.67
Subcontractor/Employer Name	\$220.67		\$ 220.67
Grand Total	\$4,726.81	\$ 142.16	\$4,868.97

Refund of Deposit Memorandum Template

DATE

MEMORANDUM FOR: NAME, National Director
Office of Davis-Bacon and Labor Standards

FROM: NAME, Deputy Director, Name of Hub

SUBJECT: Voucher payment of deposit on PROJECT NAME, PROJECT #
Voucher Ticket #LR-XXXXXXXXXX

This memorandum is to request that HUD-HQ refund the remaining amount of the deposit from CONTRACTOR NAME. The collection of funds via the DBLS deposit process was the result of a review of the subject project by NAME AND TITLE for the purpose of ADD CONTENT.

The deposit was collected on DATE and the DBLS offered its final closing clearance notice to Multifamily Housing on DATE. As a condition of proceeding to final closing, DBLS collected a deposit of \$AMOUNT (the estimated amount due to affected employees and/or for liquidated damages under the Contract Work Hours and Safety Standards Act), pending internal review.

The DBLS review has concluded and [we have determined that there are no further underpayments or liquidated damages due and no outstanding claims from the employees] [OR] [the amount of the deposit exceeds the amount of wage underpayments and/or liquidated damages determined to be due]. I believe it is appropriate that DBLS release [all remaining funds] [OR] [the excess funds] back to the depositor.

Please find attached the required HUD Form 4734, along with supporting documentation to initiate the payment. If you have any questions, please contact me at (XXX) XXX-XXXX or by e-mail at XXX@hud.gov.

Attachments

Acronyms and Symbols

AAM	All Agency Memorandum (DOL)
AHAP	Agreement to Enter into a Housing Assistance Payments Contract
ALJ	Administrative Law Judge
APRAC	Agreement to Enter into a Project Rental Assistance Contract
ARB	Administrative Review Board
BEDI	Brownfields Economic Development Initiative
CBA	Collective Bargaining Agreement
CDBG	Community Development Block Grant
CFR	Code of Federal Regulations
CPD	Community Planning and Development
CPR	Certified Payroll Report
CWHSSA	Contract Work Hours and Safety Standards Act
DBA	Davis-Bacon Act
DBLS	Office of Davis-Bacon and Labor Standards
DBRA	Davis-Bacon and Related Acts
DHHL	Department of Hawaiian Home Lands
DOL	U.S. Department of Labor
EDI	Economic Development Initiative
EIN	Employer Identification Number
FAR	Federal Acquisition Regulations
FASA	Federal Acquisition Streamlining Act
FHA	Federal Housing Administration
FLSA	Fair Labor Standards Act
FOIA	Freedom of Information Act
HCDA	Housing and Community Development Act of 1974
HFA	Housing Finance Agency
HQLS	Headquarters Office Davis-Bacon and Labor Standards
HUD	U.S. Department of Housing and Urban Development
IHA	Indian Housing Authority
IHBG	Indian Housing Block Grant
LCA	(State or) Local Contracting Agency
LSIS	Labor Standards Information System
LSS	Labor Standards Specialist/Staff
MWD	Maintenance Wage Rate Determination
NAHA	National Affordable Housing Act
NAHASDA	Native American Housing Assistance and Self-determination Act
NHHBG	Native Hawaiian Housing Block Grant
NHA	National Housing Act
OA	Office of Apprenticeship at DOL

ONAP	Office of Native American Programs
O/T	Overtime
PA	Portal to Portal Act
PHA	Public Housing Agency
PIH	Office of Public and Indian Housing
S/T	Straight-time
SAC	State Apprenticeship Council/Agency
SCA	Service Contract Act of 1965
SRO	Single Room Occupancy
SSN	Social Security Number
TDHE	Tribally Designated Housing Entity
TDW(s)	Tribally Determined Wage Rate(s)
TIN	Tax Identification Number
USHA	U.S. Housing Act of 1937
§	Section
¶	Paragraph

Related Web Sites

List of Parties Excluded from Federal Procurement and Non-Procurement Programs (Debarred List)	https://sam.gov/content/exclusions
Davis-Bacon Act Wage Decisions	https://sam.gov/content/wage-determinations Click on “Public Buildings or Works”
HUD Office of Davis-Bacon and Labor Standards	https://www.hud.gov/program_offices/davis_bacon_and_labor_standards
HUD Regulations (Title 24)	https://www.hud.gov/sites/documents/DOC_12538.PDF
HUDCLIPS (Forms and Publications)	https://www.hud.gov/program_offices/administrati on/hudclips
DOL Davis-Bacon and Related Acts	https://www.dol.gov/whd/govcontracts/dbra.htm
DOL Field Operations Handbook (Chapter 15)	https://www.dol.gov/whd/FOH/FOH_Ch15.pdf
DOL Regulations (Title 29)	https://www.dol.gov/dol/cfr/Title_29/Chapter_I.htm
DOL Wage and Hour Division Prevailing Wage Resources	https://www.dol.gov/whd/govcontracts/PrevailingW ageResources.htm
DOL All Agency Memorandums	https://sam.gov/content/wage-determinations/resources/all-agency-memos