
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. In this chapter, *DOL* shall mean the Department of Labor, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. All references to LR2000 likewise refer to any successor program/software/system instituted by HUD to manage such activity.

This chapter is prepared in two sections. The first deals with project administration, and the second with basic enforcement.

This chapter assumes that a proper determination of labor standards applicability has been made for the project(s) involved and that the correct Davis-Bacon wage decision has been assigned. (See Chapters 2 and 3 for guidance concerning Davis-Bacon applicability and wage decisions.) Labor standards administration and enforcement is conducted by LRS for certain multifamily programs (e.g., FHA-insured; 202, 811) and by LCA staff when performing delegated functions for HUD programs operated by that agency (e.g., CDBG, HOME, HOPE VI, IHBG, NHHBG). While the responsibilities are in many respects the same, the directions for LRS versus LCA vary in certain cases. This chapter will attempt to differentiate and provide appropriate direction where there is such a variance.

5-2 **Field LRS/LCA Staff Responsibilities.**

A. **Responsibilities/direction shared by LRS/LCAs.** For each project assigned to field LRS and LCA staff, the staff shall:

1. Confirm the specific 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 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, as needed, for the construction of the project.
6. Perform periodic “spot-check” reviews of certified payroll reports (CPRs) and related submissions, including 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. As necessary, refer through the RLRO cases for administrative hearing (29 CFR, Part 5, §5.11) and/or make recommendations for debarment (29 CFR, Part 5, §5.12) and/or CWHSSA liquidated damages assessment (29 CFR, Part 5, §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 LRS.

1. Recommend to the Regional Labor Relations Officer (RLRO) cases where investigation appears to be warranted.
2. At the direction of the RLRO, conduct investigations of labor standards violations.
3. As necessary, refer to the RLRO cases for administrative hearing (29 CFR, Part 5, §5.11) and/or make recommendations for debarment (29 CFR, Part 5, §5.12) and/or CWHSSA liquidated damages assessment (29 CFR, Part 5, §5.8).
4. As necessary, recommend to the RLRO 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 LRS, after consultation, cases where investigation appears to be warranted. LCAs may also confer and refer directly to DOL.
2. As necessary, refer to the LRS cases for administrative hearing (29 CFR, Part 5, §5.11) and/or make recommendations for debarment

(29 CFR, Part 5, §5.12) and/or CWHSSA liquidated damages assessment (29 CFR, Part 5, §5.8).

3. As necessary, 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 Davis-Bacon wage decision and the appropriate contract provisions containing the labor standards clauses. These are often inserted in the contract specifications. The wage decision lists the work classifications approved for the project and the minimum wage rates that must be paid to laborers and mechanics performing the work of the corresponding classifications. The contract clauses prescribe the responsibilities of the contractor and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. 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. **LRS responsibilities - initial closing clearance.** The LRS shall provide initial closing clearance advice for each project. Initial closing clearance considers whether the current, applicable Davis-Bacon wage decision and appropriate contract standards (typically, for multifamily development projects, form HUD-92554M) are incorporated into the contract for construction. The LRS 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 LRS shall provide written clearance advice to the Offices of Housing and Counsel confirming that:

1. The correct wage decision and contract standards are present in the contract and the closing may proceed; or
2. The closing may proceed, conditioned on the incorporation of the correct wage decision and/or contract standards into the construction contract prior to initial closing. A copy of the correct wage decision and/or contract standards shall be attached to a conditioned clearance advice.

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 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 **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 (e.g., forms HUD-4010; HUD-52531B; HUD-5370; HUD-5370-EZ; HUD-92554M6) 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 LRS/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 LRS/LCA 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.

5-5 **Additional classifications and wage rates.** If the wage decision does not include a work classification(s) required for the construction of the project, the LRS/LCA may approve an additional classification(s) and wage rate(s). Generally, additional classification and wage rates requests shall not be approved for apprentices, trainees, helpers or welders. (See paragraph 3-17 for additional classification and wage rate guidance concerning Davis-Bacon wage decisions.)

5-6 **Labor standards administration and enforcement files.** The LRS/LCA is responsible for the creation, maintenance and preservation of labor standards files for each prevailing wage project administered by them. 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 LRS/LCA shall establish a system of labor standards files for each covered project.

A. **LRS file system requirements.** At a minimum, the system must include a Project Lead File (*aka* Labor Relations “legal” or “docket” file). Other files may be established as needed, at the direction of the RLRO or at the discretion of the LRS.

1. **Project lead file.** The project lead file shall contain the applicable Davis-Bacon wage decision; 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 RLRO or the discretion of the LRS. 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 or components. *Except* that the file system demonstrates that the LCA has successfully carried out its labor standards responsibilities. LCAs may find LRS file system requirements (above) helpful in establishing a satisfactory file system. At a minimum, these files/documentation must evidence that the LCA:

1. Met the general requirements at paragraph 5-6(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, if applicable.
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, as needed, to assess the labor standards performance of the prime contractor and any subcontractors.
7. Detected labor standards discrepancies and other violations and took actions, as needed, 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.

5-7 **Final closing/close-out review.** The LRS/LCA shall conduct 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 LRS/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. LRS final closing clearance. The LRS shall take actions as needed to provide written clearance advice to the Offices of Housing and 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 RLRO.

3. In the event a deposit appears warranted, the LRS shall provide a recommendation to the RLRO 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 RLRO shall consider the issues presented in the report. Based upon his/her review, the RLRO may:
 - a. Approve the deposit requirement for the deposit amount recommended.
 - b. Approve the deposit requirement for an amount different (more or less) than recommended by the LRS. The RLRO shall notify the LRS of the modified amount and the reasons so that the LRS can modify the schedule, accordingly. Or,
 - c. Disapprove the recommended deposit. In such cases, the RLRO shall notify the LRS in writing of his/her decision and instruct the LRS to provide final closing clearance without condition.

5. When a deposit requirement is approved by the RLRO, the LRS shall enter the deposit requirement in LR2000 generating a deposit ticket number, and prepare a *Deposit Agreement* (form HUD-4732), deposit schedule and deposit ticket (*Wire Transfer Instructions for Labor Standards Deposit Accounts*, form HUD-4733). The LRS shall provide these documents with the conditional final closing advice to the Offices of Housing and Counsel. (See also Chapter 9, *Deposits and Escrow Accounts*.) (**Note:** Only deposit ticket numbers generated in LR2000 may be used.)
 6. The LRS shall record the final closing clearance in LR2000.
- 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.

- 5-8 **Labor standards compliance monitoring.** Periodic monitoring of project CPRs and related documents is performed to ensure employer compliance 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. Conversely, CPR reviews may disclose unsatisfactory patterns that warrant closer inspection such as targeted on-site interviews (see 5-8(B) and 5-8(C)(6), below).
- A. **CPR spot-check reviews.** The LRS/LCA shall monitor the labor standards performance of each prime contractor and subcontractors (employers), including timely CPR submission and reporting requirements. CPR reviews shall 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 an employer or 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 that knows what is required to meet prevailing wage requirements; knows that 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 Labor Relations 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 his/her identity will only be disclosed with the prior written consent of the employee. (See also 4-10, *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 shall permit 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 his/her 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.** Completed HUD-11s shall be promptly forwarded to the LRS/LCA. The HUD-11s shall be compared to the corresponding CPR during regular project CPR reviews. The result of the comparison, including any discrepancies, shall be noted in the space provided for the payroll examiner's comments. The payroll examiner shall sign and date each HUD-11 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 LRS 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 LRS/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.)

5-9 **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* shall 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 LRS 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 action necessary to alert appropriate personnel so that contract payments may be reduced or suspended, as needed.

- B. **Payroll format.** Employers are encouraged to 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, provided that 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 4-6, *Certified payroll reports*.)

Unacceptable payroll format corrections. Employers who fail to use an acceptable payroll format or Statement of Compliance shall be required to 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 reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Missing identification number corrections. Employers shall be required to 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 be required to 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 be required to classify employees in accordance with the wage decision (e.g., reclassifying "Journeymen" 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 be required to 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 journeyworkers and the apprentice or trainee wage schedule permitted in the approved training program. The ratio of apprentices or trainees to journeyworkers 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 be required to 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 5-10(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 shall be required to make wage restitution to the affected employees. The employer may also be assessed liquidated damages for each CWHSSA overtime violation. (See 5-10(C) and (D), *Computing CWHSSA Overtime Restitution, and Calculating CWHSSA Liquidated Damages.*) For other, non-CWHSSA covered projects, the LRS shall refer to DOL any potential FLSA overtime violations.

- I. Payroll computations.** Payroll computations (hours worked times rate of pay) and extensions (deductions, net pay) shall 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.

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 Labor Relations' hierarchy [i.e., LRS, RLRO, Headquarters Labor Relations (HQLR)]. RLROs 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 LRS/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 LRS/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 his/her 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.

5-10 **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 he/she is 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 rate of \$10 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* that 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, \$30 in liquidated damages would be computed -- \$10 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 shall be required to report the restitution on a correction CPR. The correction CPR shall reflect the previous CPRs or period of time for which restitution is due (e.g., Payrolls #1 through #6; or a beginning and ending date). The correction CPR shall list each employee to whom restitution was paid; his or her work classification; the total number of work hours involved; the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions; and the net amount paid. A properly executed Statement of Compliance shall accompany the correction CPR.

Note: In the course of 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 LRS/LCA shall compute the amounts of restitution due and compare his/her computations to the correction CPR to ensure that full restitution was made. The employer shall be notified of any discrepancies, and 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 LRS/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 LRS may consult with the RLRO as to whether a stipulation is appropriate. The refusal of an employer to provide a stipulation when requested by LRS/LCA shall be 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 LRS/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.

5-11 **Restitution process.** When it is believed that underpayments have occurred, the LRS/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 LRS/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 LRS/LCA shall make appropriate notes to the file (the LRS shall record such notes in LR2000).

2. If employer's response/explanation does not negate back wage findings, and the employer agrees to pay the back wages:
 - a. The LRS/LCA shall instruct the employer to compute and pay back wages to the affected employees and submit a correction CPR within 30 days. When the correction CPR is received, the LRS/LCA shall test and verify the back wage computations and payments to the employees.
 - b. If amounts paid agree with the verification, the LRS/LCA shall record the restitution paid in LR2000.
 - c. If amounts paid do not agree with the verification, the LRS/LCA shall contact the employer for further corrective action.
 - d. The LRS/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 LRS/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:

1. Summary of findings
2. Schedule of back wages found due
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 LRS shall send a copy of both the determination and the notice to the prime contractor to the RLRO.)

- C. **Adjustments to findings.** If the employer or prime contractor responds to the LRS/LCA determination and/or notice seeking resolution, the LRS/LCA shall make adjustments to the findings of underpayment, as appropriate, based upon the employer's and/or prime contractor's response(s).

Note: LRS/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. LRS/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 LRS/LCA shall direct the employer and/or prime contractor to pay and document wage restitution on a correction CPR within 30 days.
2. When the correction CPR is received, the LRS/LCA shall test and verify the amounts of back wage paid to the employees.
 - a. If amounts paid agree with the verification: the LRS shall record the restitution paid in LR2000; the LCA shall maintain documentation of the restitution paid.
 - b. If amounts paid do not agree with the verification, the LRS/LCA shall contact the employer/prime contractor for further corrective action.
3. The LRS/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.** If the employer fails to respond or appeal, the LRS/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 Section 7-4, *Notice of right to appeal.*)
2. The LRS/LCA shall take actions necessary to withhold from contract payments, if warranted.

3. The LRS shall send a copy of the notice to the prime contractor to the RLRO.

5-12 **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 damages are calculated at the rate of \$10 per day, per violation (see 5-10(D)).

- A. **Notice of intent to assess.** In every case where overtime violations are disclosed, the LRS/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 shall be 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 must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted.
 1. If the computed amount of liquidated damages is \$100 or less, the LRS 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 RLRO 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 RLRO and HQLR for disposition. The RLRO shall forward to HQLR 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, HQLR shall 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, DC, within 60 days of the date of the order.
5. LCAs must refer any request for reduction or waiver to the appropriate LRS *except* that state agency LCAs may refer such requests directly to DOL.

C. **Implementing the final order.** The LRS/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 shall be 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, OLR shall transfer semi-annually to the US Treasury liquidated damages assessed to contractors during the previous six-month period.
4. The LRS shall provide instructions to contractors and LCAs for payment of liquidated damages by wire transfer to the HUD U.S. Treasury account.

5-13 **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. The LRS shall follow the instructions at paragraph 5-12 to assess and implement the final order regarding these liquidated damages.

Related Appendices

III-1 Willful Violations/Falsification Indicators
