

**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. 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.

Disputes may involve differences of opinion in the application of prevailing wage standards and/or wage determinations; the wages determined to prevail; the permissibility of additional classifications and wage rates; the payment or underpayment of wages, or a combination thereof. For the purposes of administering and enforcing DBRA standards, DOL regulations offer avenues of administrative review. Sanctions may include assessment of liquidated damages for CWHSSA overtime violations, suspension of contract payments, withholding of Federal assistance, contract termination, debarment from participation in Federal programs, and, for falsification, a conviction resulting in a monetary fine, imprisonment, or both.

This Chapter is prepared in two sections. The first deals with disputes and appeals, and the second with recommending or imposing sanctions.

## Section I – Disputes and Appeals

- 7-2 **Rulings and interpretations unrelated to findings of underpayment.** Disputes concerning the wage rates determined by DOL to be prevailing; DBRA applicability; character of work; the interpretation and application of DOL regulations at 29 CFR Parts 1, 3 and 5; and other such matters must be referred to the DOL Wage and Hour Administrator for his/her ruling and/or interpretation (29 CFR §5.13). Any request for ruling or interpretation from the Administrator via OLR must be submitted through HQLR. (See also 3-17(C)(8) and 3-18.)
- 7-3 **Disputes concerning findings of underpayment.** Disputes over findings of underpayment requiring OLR attention typically involve determinations of wage due associated with OLR enforcement actions. Disputes may originate from the employer, prime contractor, or any other interested party.
- 7-4 **Notice of right to appeal.** Each determination of wages due issued by OLR shall include a notice concerning the right of the parties involved to appeal the determination to the next level of authority. OLR field office/LRS determinations are subject to review by the respective RLRO; RLRO determinations are subject to review by HQLR. (See 5-11(B), (C) and (D).) Notices shall be prepared in the following manner.
- A. **LRS/RLRO determinations.** Notices of right to appeal must include:
1. **Appellant filing requirements.** Appeals must:
    - a. Be made in writing to the RLRO/HQLR as appropriate;
    - b. Be postmarked or received within 30 days after the date of the notice;
    - c. Identify the findings in dispute and why; and,
    - d. Include supporting documentation.
  2. **Contact information.** The name and address of the OLR staff to whom the appeal must be addressed.
- 7-5 **Submission of the case file.** When it is known that an appeal has been or will be filed, the LRS shall prepare the case file for submission to the RLRO. (Where the RLRO has issued or reviewed the original determination of wages due, the case file submission is not required unless/until referral is made to HQLR.) The case file must contain a narrative report of the enforcement activity, status and disposition. The report must address such aspects as:
1. Project name, number and location;
  2. Applicability (e.g., labor standards clause of HUD Act);
  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 the applicable wage decision, 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.

7-6 **Case review.** The RLRO and, if necessary, HQLR 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 back wage computations;
2. Make adjustments to the findings/calculations, as appropriate;
3. Consider the appellant's arguments against the findings/calculations;
4. Convince the appellant to pay the wage restitution due and to otherwise resolve the findings and any other violations; and, if agreement to pay cannot be reached,
5. Ensure the sufficiency of the findings and evidence to continue the appeal process.

**A. RLRO review.**

1. The RLRO shall consider the appellant's arguments and documentation against the findings and advise the appellant of his/her determination.
2. If an agreement to pay can be reached, the RLRO shall confirm the agreement in writing to the appellant, and (if appropriate) return the case file to the LRS with instructions to implement the agreement and verify compliance with its terms.
3. If an agreement to pay cannot be reached:

- a. The RLRO shall submit the case file with a memorandum to HQLR explaining the issues in dispute and requesting referral to DOL.
- b. The RLRO shall advise the appellant in writing of the referral and request to HQLR.

**B. HQLR review.**

1. The Director or his/her designee shall consider the appellant's arguments and documentation against the RLROs findings and advise the appellant of his/her determination.
2. If an agreement to pay can be reached, the Director/designee shall confirm the agreement in writing to the appellant, and return the case file to the RLRO with instructions to implement the agreement and verify compliance with its terms.
3. If an agreement to pay cannot be reached, the Director/designee shall refer the case to DOL for hearing and shall so advise the appellant in writing.

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## Section II - Sanctions

7-7 **General.** There is a range of sanctions that may be imposed for DBRA-associated alleged, suspected or known labor standards violations. These are described first by statute(s). Violations (alleged, suspected or known) may result in:

**A. 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. Contract Work Hours and Safety Standards Act (CWHSSA).** In addition to the sanctions described, above, (7-7A):

1. Liquidated damages accruing at \$10 per day per violation.
2. Intentional violations are a Federal misdemeanor, punishable for each and every offense by a fine of not more than \$1,000, or by imprisonment for not more than six (6) months, or both.

**C. Copeland Act.** There are 3 levels of Copeland Act violation. In addition to the sanctions described, above, (7-7(A)):

1. **Unauthorized deductions.** Same as 7-7(A) *unless* associated with certified payroll falsification or kick-backs, below.
2. **Payroll falsification.** Criminal prosecution resulting in:
  - a. Monetary fines up to \$5,000; and/or
  - b. Imprisonment for not more than two (2) years.
3. **Kick-backs.** Criminal prosecution *only* where the nature of Federal assistance is more than a loan guarantee or insurance. **Note:** In every instance where such kick-backs are alleged, suspected or known, the issue **must** be referred to DOL immediately.

7-8 **Referrals/recommendations regarding sanctions.** Any referrals or recommendations for sanction must be submitted to the appropriate authority, through appropriate channels, as follows. In all cases, states may submit any such referral or recommendation to DOL, directly.

- A. Reduction or suspension of contract payments.** The LRS/LCA may request or impose restrictions on contract payments. An LRS should consult with and secure the concurrence of the RLRO for the jurisdiction involved.

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An LCA does not need OLR 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, 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. OLR/LCA staff must submit any suspension/debarment recommendation through the established hierarchy (LCA to LRS; LRS to RLRO; RLRO to HQLR; HQLR to DOL).
- C. Criminal prosecution.** Any case involving alleged, suspected or known DBRA violations that may involve criminal prosecution (i.e., falsification of certified payrolls or kick-backs) must be adjudicated by or through DOL.
1. **Payroll falsification.** Cases that involve certified payroll falsification may have been referred to DOL for its investigation at the outset or referred to DOL in the course of referrals for administrative review/hearings or other sanctions. All referrals suggesting consideration for criminal prosecution must be submitted through the established hierarchy (LCA to LRS; LRS to RLRO; RLRO to HQLR; HQLR to DOL). States may submit any such recommendation to DOL, directly.
  2. **Kick-backs.** As indicated at 7-7(C)(3) (above), every instance of alleged, suspected or known kick-backs where the nature of Federal assistance is more than a loan guarantee or insurance **must** be referred to DOL immediately upon such recognition.