

## Section II Production

### Appendix 4.1

## HUD Labor Standards and Enforcement Relations Protocol

### Section 232 and 241(a)

Protocols set forth herein are applicable when Davis-Bacon applies, as indicated in Section II, Chapter 2.

#### Early Commencement of Construction Processing

When an application for Early Commencement of Construction is submitted, the U/W will contact the Regional Labor Standards and Enforcement Relations-Officer (~~RLRORLSEO~~) in the manner specified below in the Firm Commitment Processing section. If the application is acceptable, ORCF will issue an Early Commencement Approval Letter, which will include language requiring Davis-Bacon compliance. The wage decision effective date is the construction start date. The FHA Lender's pre-construction conference coordinator (PCCC) must notify the ~~RLRORLSEO~~ of the actual date of start of construction.

#### Firm Commitment Processing

1. When the Firm application is submitted, the ORCF Underwriter (U/W) will contact the ~~RLRORLSEO~~ via email to initiate coordination with the Office of Labor Relations (OLR). A list of the ~~RLRORLSEO~~'s and their contact information is posted at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/labor\\_standards\\_enforcement/laborrelstfh](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/laborrelstfh)

The U/W shall furnish to the ~~RLRORLSEO~~ (or his/her designee) via email the Lender's Narrative (the Memo for Post-Commitment Early Start of Construction Request should also be included, when applicable), and Division I (when using the MasterFormat 1995) or Division 00 73 00 (when using the MasterFormat 2010), of the Specifications, which includes the Davis Bacon Wage Decision, and the Supplementary Conditions of the Contract for Construction. The Lender's Narrative will contain the following information:

- Project location.
  - Number of stories.
  - Details on any commercial areas (square footage, percentage of gross floor area and description).
  - A statement as to whether all units have both a kitchen/kitchenette and bathroom.
  - The contact information (name, phone number and email address) for the PCCC.
2. The RLRORLSEO/designee shall review the Narrative and specifications and determine whether the specifications contain the correct Davis-Bacon wage decision based upon the project description. The RLRORLSEO/designee shall notify the U/W via email either confirming the wage decision is correct, or advising the wage decision must be changed. The RLRORLSEO/designee shall attach an electronic copy of the correct wage decision if a change is required. Upon receipt, the U/W will email a copy to the OHP Construction Manager (CM) and to the PCCC.
- The wage decision is subject to modification and must be verified as current by OLR during initial closing clearance. The effective date of the wage decision is the date of initial endorsement provided that construction starts within 90 days. For projects utilizing a Post-Commitment Early Start of Construction (Early Start), the wage decision effective date will be the construction start date. On Early Start projects, the PCCC must notify the RLRORLSEO of the actual date of start of construction to verify the most current applicable Davis-Bacon wage rate.
3. The Firm Commitment will include language requiring Davis-Bacon compliance, as follows:

***The borrower(s), its contractors and subcontractors, shall comply with all applicable Federal labor standards provisions as expressed in the Supplementary Conditions of the Contract for Construction, in connection with the construction of said Project.***

### **Initial Closing Clearance**

1. The PCCC shall notify via email the RLRORLSEO/designee, the ORCF Closing Coordinator (Closer) and the CM of the proposed location, date and time of the Pre-Construction Conference and Initial Closing. Such email shall attach the most recent version of Division I of the Specifications.
2. The RLRORLSEO/designee shall review the contract specifications to determine whether the current and correct Davis-Bacon wage decision and the Supplementary Conditions of the Contract for Construction are incorporated. The RLRORLSEO/designee shall provide initial closing clearance via email which shall include the contact information for the Labor Relations Specialist (LRS) that will be responsible for Davis-Bacon technical support, compliance monitoring, and enforcement.

Initial closing clearance may be conditioned upon the incorporation of a corrected wage decision (e.g., updated) and/or the Supplementary Conditions of the Contract for Construction in the contract specifications. If so, the ~~RLRORLSEO~~/designee shall attach an electronic copy of the current/correct wage decision to the clearance email.

3. At the Pre-Construction Conference the PCCC will notify all appropriate parties (general contractor, architect and borrower) of the contact information for the LRS staff.
4. The PCCC shall notify the LRS of the actual date of initial endorsement.

### **Construction Phase**

1. The project architect and the PCCC shall notify, via email (followed by a hard copy), the CM of the date of construction start, the CM will then notify the LRS via email of the date construction started. In the event construction did not begin within 90 days after initial endorsement, the LRS shall determine whether the wage decision had been modified and whether any updates must be incorporated into the Contract. The LRS shall promptly notify the CM via email if the contract wage decision must be updated and will attach an electronic copy of the required wage decision.
2. During construction, the CM will provide the LRS with electronic versions of the Record of Employee Interview (HUD-11) and HUD Representative's Trip Report (Form HUD-95379-ORCF) completed by the HUD Inspector.
3. During construction and should an investigation occur, the LRS will provide electronic notice and summaries of said investigations and findings (excluding confidential information) to the CM.
4. Should the LRS or the U.S. Department of Labor instruct withholding of requisitions/advances, the CM shall be notified via email of such instructions (including a copy of the proposed notice to the contractor and the withholding amount required). The CM shall work with the LRS or the U.S Department of Labor staff to implement such instructions or address the concerns (if at all possible). Should requisitions/advances be withheld, the CM shall work with the LRS or the U.S Department of Labor staff to determine when or if the requisitions/advances shall be resumed.
5. At approximately 70% construction completion, the CM shall notify the LRS via email, to encourage the LRS to address any labor relations issues well in advance of construction completion.
6. The CM shall notify the LRS via email of any requests for retainage reductions. The CM and LRS will recommend approval/disapproval of such request in an expeditious manner.

### **Final Closing Clearance**

1. For each new construction, substantial rehabilitation, or 241(a) project subject to labor standards provisions, the LRS must ensure that any/all labor standards issues are resolved or that provisions are made to ensure the payment of wage restitution that may be found due. At the earlier of at least 10 days prior to Final Closing or when the Final Closing documents are received, the Closer will request via email OLR clearance to proceed with the Final Closing.
2. The LRS shall perform a final project review and shall provide final closing clearance based on the results of this review.

If there are no labor standards issues outstanding the LRS shall provide final closing clearance without conditions via email to the Closer. The Closer will notify the Closing Attorney and lender of such clearance via email.

If there are outstanding labor standards issues the LRS shall provide conditional final closing clearance via email to the Closer. The Borrower or general contractor will be required to deposit to a specified U.S. Treasury account, via Fedwire, funds sufficient to satisfy any deficiencies. The LRS shall attach wire transfer instructions; a deposit agreement and a schedule detailing the purpose(s) and amount(s) to the conditional clearance email. The Closer shall forward this email to the Closing Attorney. The LRS shall likewise notify the Borrower or general contractor of the deposit requirement.

3. No later than the day of the final closing and before the closing concludes, the depositor must furnish evidence of deposit in the amount required (e.g., bank receipt, wire transfer advice) and the depositor must execute the deposit agreement. The Closer shall promptly deliver to the LRS the original, signed deposit agreement and the deposit evidence.