



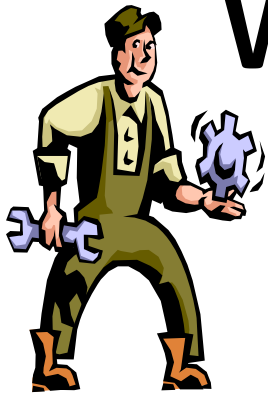
Davis-Bacon & Related Acts

Understanding the Federal
Labor Regulations



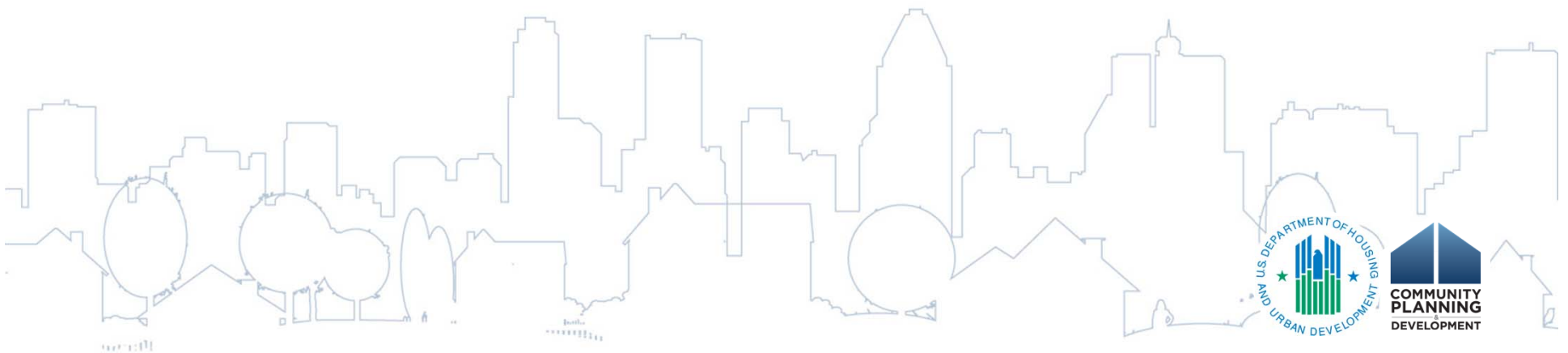


Welcome and Introductions



A Little About us...

- HUD's Community Planning and Development Training Institute
- Course provided by HUD
- Who are we?



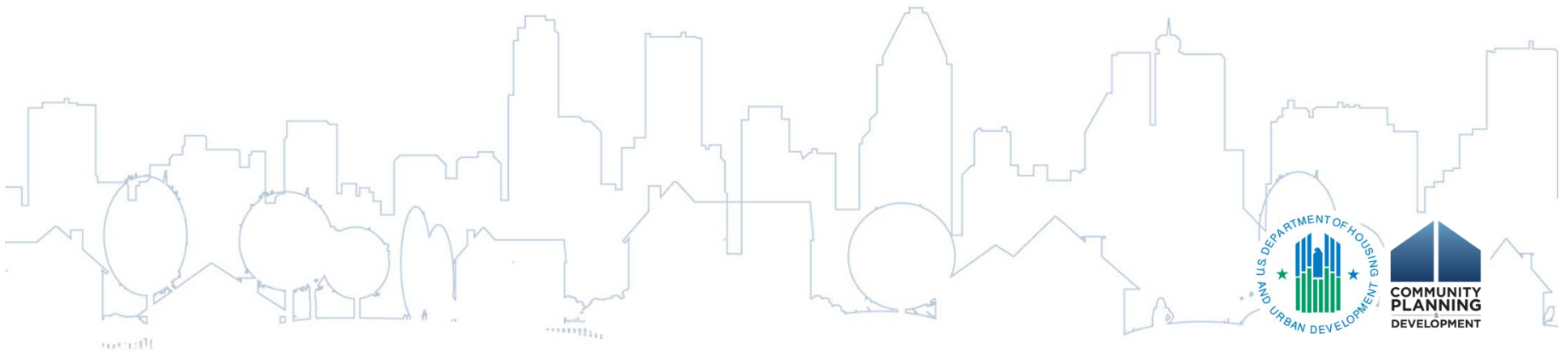
How About You

- Name
- Organization
- Experience with labor standards
- Burning questions?



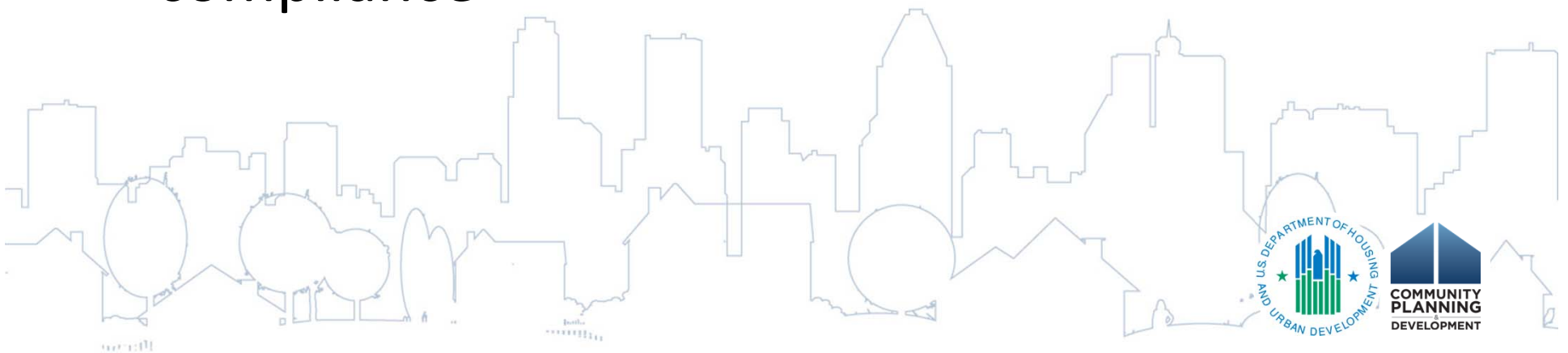
Ground Rules

- Actively participate!
 - Ask questions
 - Share ideas and strategies
- Come back from breaks & lunch on time
- Please turn off or silence phones



Agenda

- Introduction to Federal labor standards in HUD programs
- Selecting the proper wage determination adding classifications
- Local grantee administration – ensuring compliance





Overview of Federal Labor Standards Requirements



Federal Labor Standards

- General purpose – to ensure proper payment of prevailing wages to laborers
- Summary of requirements:
 - Wages paid at least once a week
 - Premium pay for overtime
 - Unauthorized deductions are prohibited



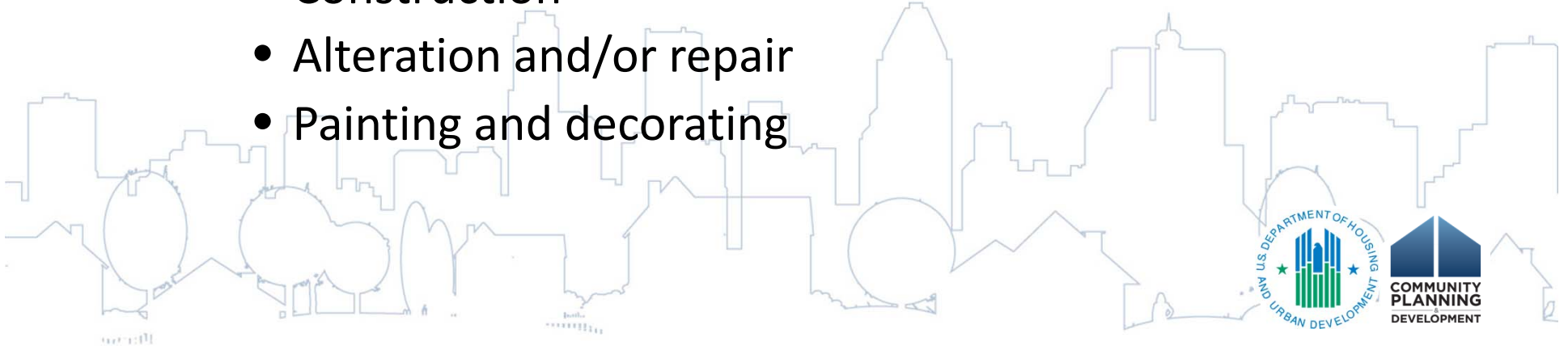
The Davis-Bacon Act (DBA)

- Davis-Bacon Act: 40 USC, Chapter 3, Section 276a-276a-5
 - Requires payment of prevailing wages, as determined by DOL
 - Provides a fair opportunity to compete in building programs funded by the Federal government
 - Prevents contractors from bidding below an area's prevailing wages



Davis-Bacon Act

- *Generally* applies to:
 - Federally funded or assisted projects valued at more than \$2,000
 - Contracts for the following types of work on public buildings or public works:
 - Construction
 - Alteration and/or repair
 - Painting and decorating



Other Labor Laws

- Contract Work Hours & Safety Standards Act (CWHSSA)
 - Workers shall not work more than 40 hours/week unless they get overtime
 - Projects must comply with safety standards
- Copeland Anti-Kickback Act
 - Requires payment of wages at once a week
 - Only permissible payroll deductions allowed
- Fair Labor Standards Act (FLSA)
 - Sets the Federal minimum wage & additional overtime requirements



Davis-Bacon Related Acts (DBRA)

- DBRA are laws that govern specific Federal programs
- DBRA that cover HUD Programs:
 - U.S. Housing Act of 1937
 - National Housing Act of 1949
 - Housing and Community Development Act of 1974
 - National Affordable Housing Act of 1990
 - Housing and Economic Recovery Act of 2008
 - America Reconstruction and Recovery Act of 2009
 - Frank-Dodd Financial Reform Act of 2010



Davis-Bacon and HUD Programs

- HUD Programs also require:
 - Competitive procurement
 - Section 3 and Equal Opportunity
 - No Excluded Parties (debarred/suspended contractors)
 - MBE/WBE participation
 - No conflict of interest
 - Energy efficiency requirements
 - Insurance and bonding

Reference Materials

- Reference materials include:
 - DOL Regulations 29CFR: Parts 1, 3, 5, 6, & 7
 - Field Operations Handbook
 - WHD – Prevailing Wage Resource Book
 - Labor Relations Letters and “On the Mark” series from HUD’s Office of Labor Relations
- See your training manual for a complete list of reference materials and resources



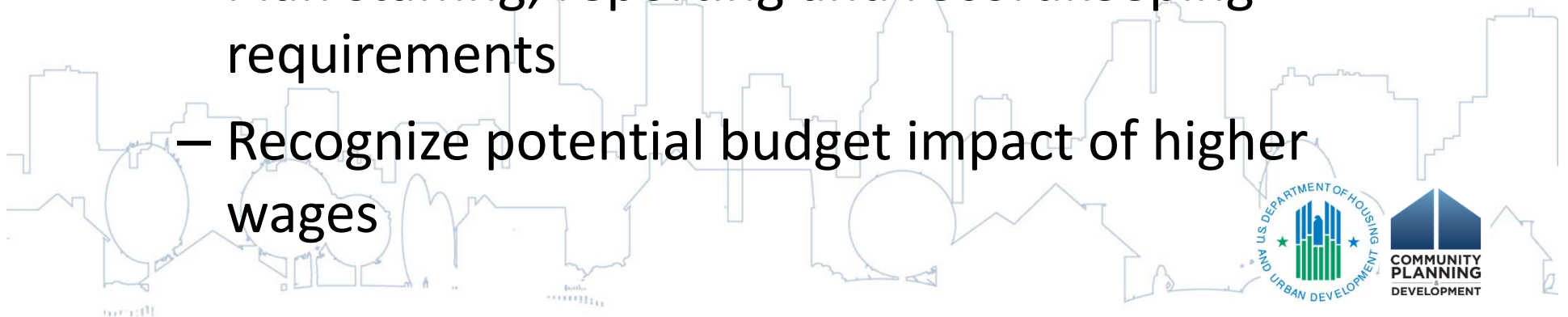


Applicability of Labor Requirements to Programs & Projects



Davis-Bacon Applicability

- Determining Davis-Bacon applicability one of the most challenging tasks for local grantees
- Grantees must:
 - Understand HUD program “triggers” based on project activity and type
 - Plan staffing, reporting and recordkeeping requirements
 - Recognize potential budget impact of higher wages



Steps to Take

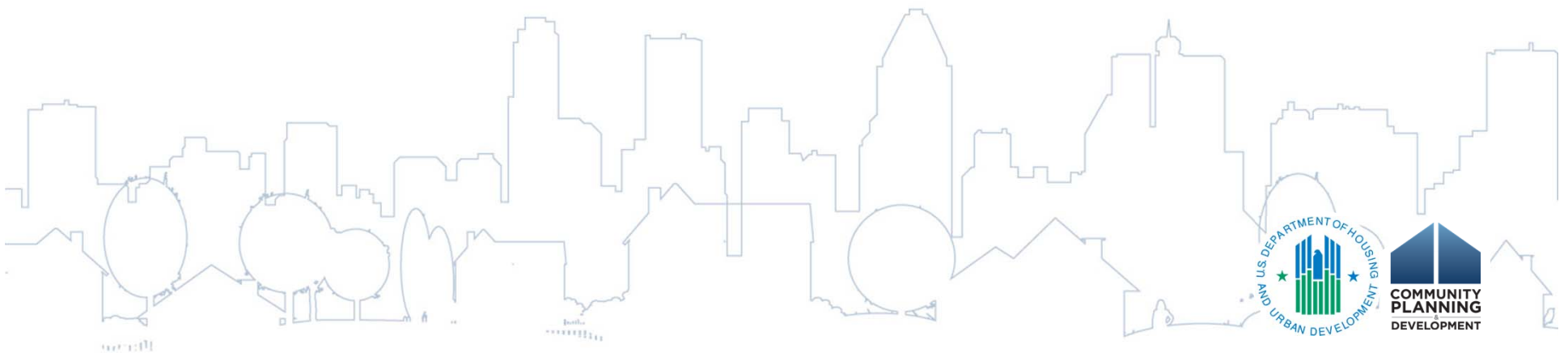
- Assume any construction work more than \$2,000 will require prevailing wage
- Review regulations governing the specific HUD Program to determine whether Davis-Bacon may NOT apply
- Contact HUD Labor Relations staff for clarification and verification of applicability of gray areas



Thresholds: CDBG Program

- Davis-Bacon Related Acts apply when federal funds...
 - Pay in whole or in part for any direct costs of construction;

AND



CDBG Thresholds, *cont.*

- The construction meets one of the following thresholds:
 - Residential: Property has 8 or more units
 - Non-residential: Any construction work valued at more than \$2,000
- Can pay for non-construction costs without triggering Davis-Bacon
 - Architectural/engineering
 - Acquisition of real property



Definition of Property

- Single family homeowner properties are typically excluded
- 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 that are commonly-owned and operated as one rental, cooperative or condominium project”



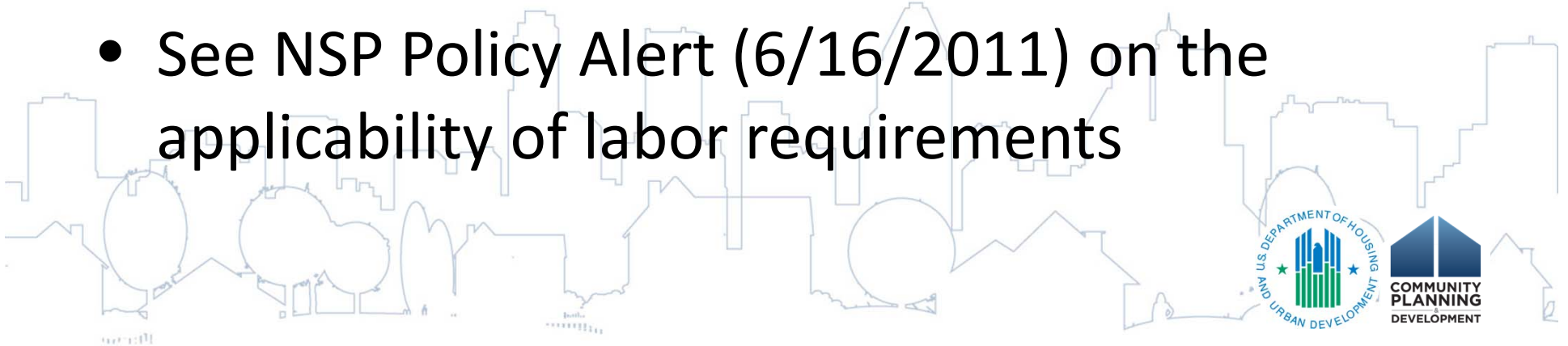
CDBG Examples

- Five (5) townhouses side by side consisting of two units each
- Three (3) apartment buildings each with 5 units located on one tract
- Eight (8) single-family (not homeownership) houses located on contiguous lots
- Public facilities
- Infrastructure
- Road or sidewalk reconstruction



Thresholds: NSP

- Applies to activities related to construction and redevelopment work financed (in whole or part) with NSP funds through purchase and redevelopment of foreclosed and abandoned homes and residential properties
- See NSP Policy Alert (6/16/2011) on the applicability of labor requirements



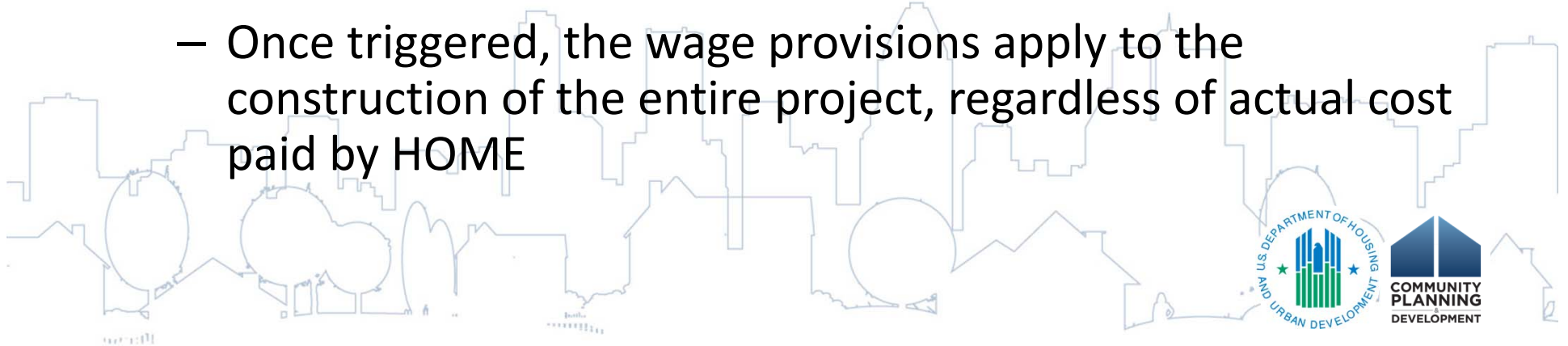
NSP Examples

- 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”
- Eight (8) houses owned and operated by the same person/entity as a single project, even if separate residential structures



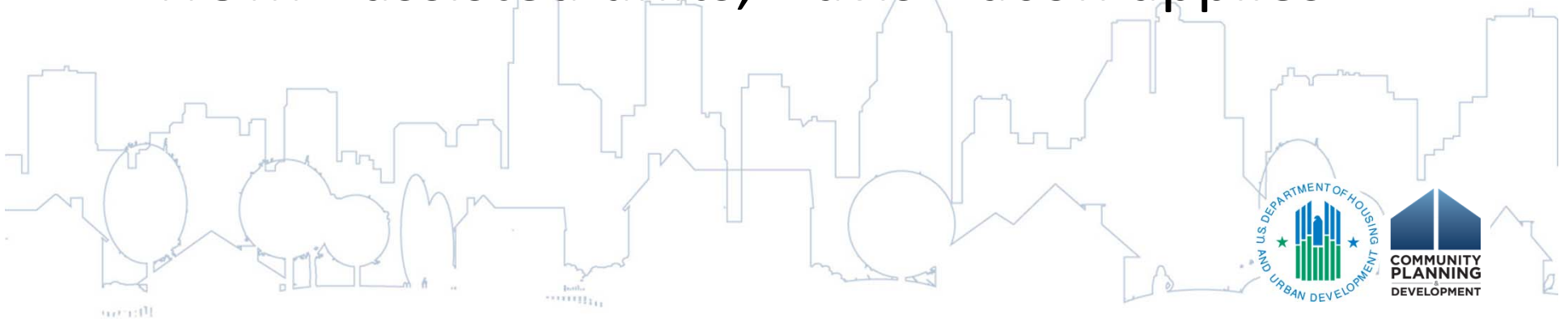
Thresholds: HOME Program

- Applies if HOME funds used for project costs (construction or non-construction) for housing with 12 or more HOME-assisted units
 - Construction contract for 12 or more HOME-assisted units is covered by labor requirements even if the contract covers more than one HOME "project"
 - Multiple construction contracts within a single project does not avoid labor requirements
 - Once triggered, the wage provisions apply to the construction of the entire project, regardless of actual cost paid by HOME



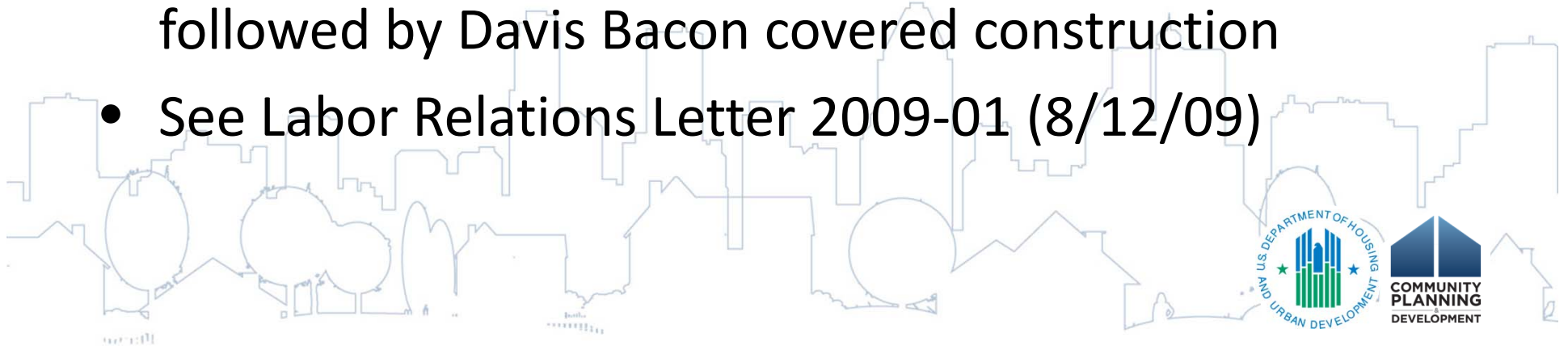
Other Issues

- Group homes can be counted as a single unit for HOME assistance
- If a pre-construction agreement is made with the owner/developer of a housing project AND construction contract covers 12 or more HOME-assisted units, Davis-Bacon applies



Exclusions

- Demolition, by itself, is not considered “**construction, alteration or repair**” and Davis-Bacon does not apply
- If subsequent construction at the site is planned as part of the same contract or subsequent contract, Davis-Bacon will apply to the **entire project**
- Davis-Bacon **will not apply to demolition** unless followed by Davis Bacon covered construction
- See Labor Relations Letter 2009-01 (8/12/09)



Exclusions, *cont.*

- Volunteer labor
- Sweat equity
- Employees of local grantee
 - Known as Force Account labor



Exemptions

- Davis-Bacon does NOT apply to:
 - Emergency Solutions Grant (ESG)
 - Housing Opportunities for Persons with AIDS (HOPWA)
 - McKinney Act Homeless Programs (except Section 8)
 - Self-Help Homeownership Opportunity Program (SHOP)



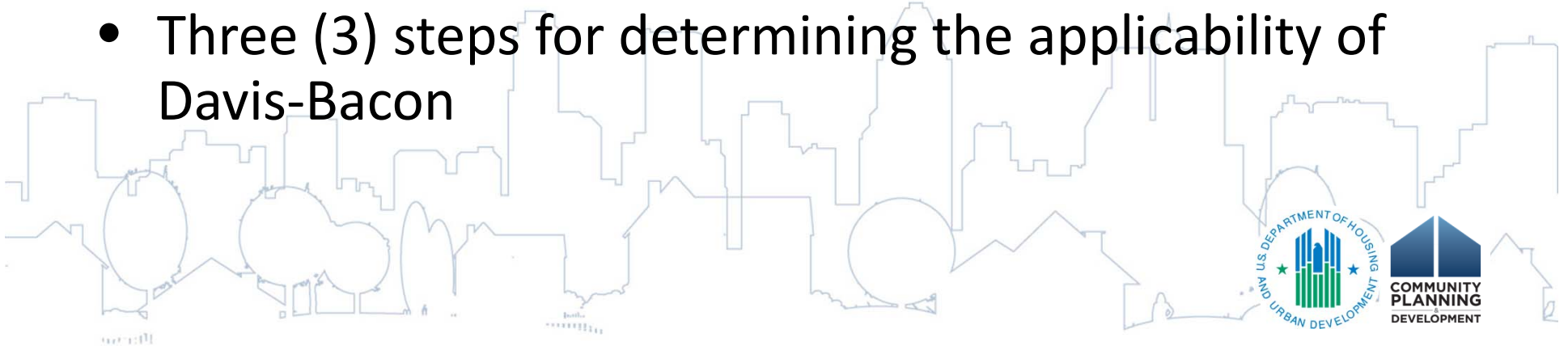
Definitions

- Apprentice
- Employee
- Fringe Benefits
- Laborer/Mechanic
- Owner/Operator
- Overtime
- Piece Work
- Site of Work
- Working Foreman
- Wage Determination/
Wage Decision
- Wages



Summary

- Davis-Bacon and Related Acts are laws that apply to specific Federal programs including CDBG, NSP and HOME
- Davis-Bacon Act requires payment of prevailing wage rates to laborers and mechanics on most Federal construction projects, plus additional requirements
- Three (3) steps for determining the applicability of Davis-Bacon





The Role of the Grantee



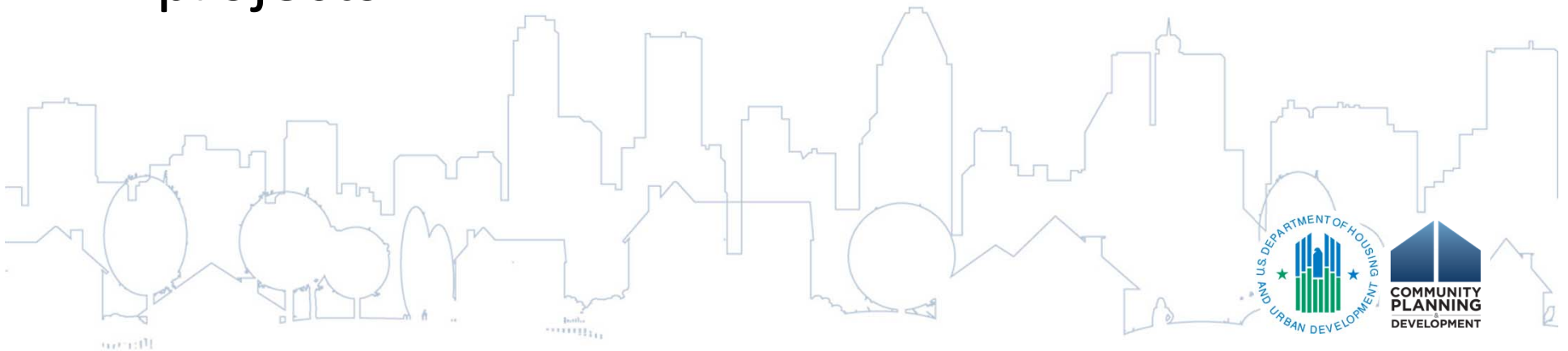
Grantee Responsibilities

- Grantees/PJs responsible for ensuring compliance
 - Contractor and subcontractors responsible for proper payments, posting wage rates and submission of weekly payrolls
- Grantees should designate a Labor Standards Compliance Officer
- Grantees must administer and enforce labor standards
 - Bid and contracting process
 - Oversight during construction
 - Project closeout and completion of activity



CHDO/Developer/Subrecipient Roles

- Grantee responsible for compliance but may designate another party to assist
- Compliance issues will hold up payments to the contractor and thus potentially delay projects



Summary

A grantee's responsibilities for administering and enforcing DBRA include:

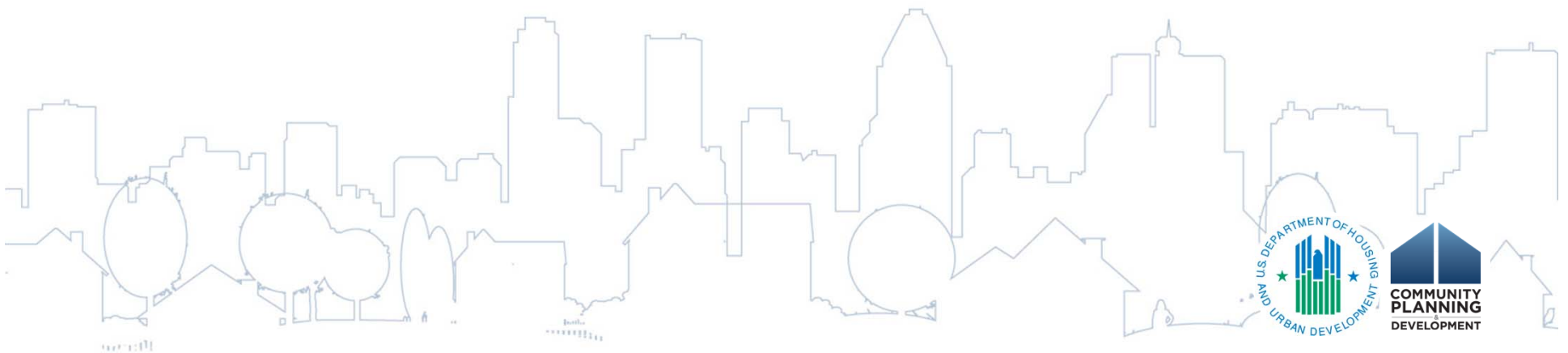
- Provide proper information upfront to contractors
- Designate a Labor Standards Compliance Officer
- Enforce labor standards compliance



Exercise #1

Applicability of Davis-Bacon

- Work as a group to determine if the prevailing wage applies.





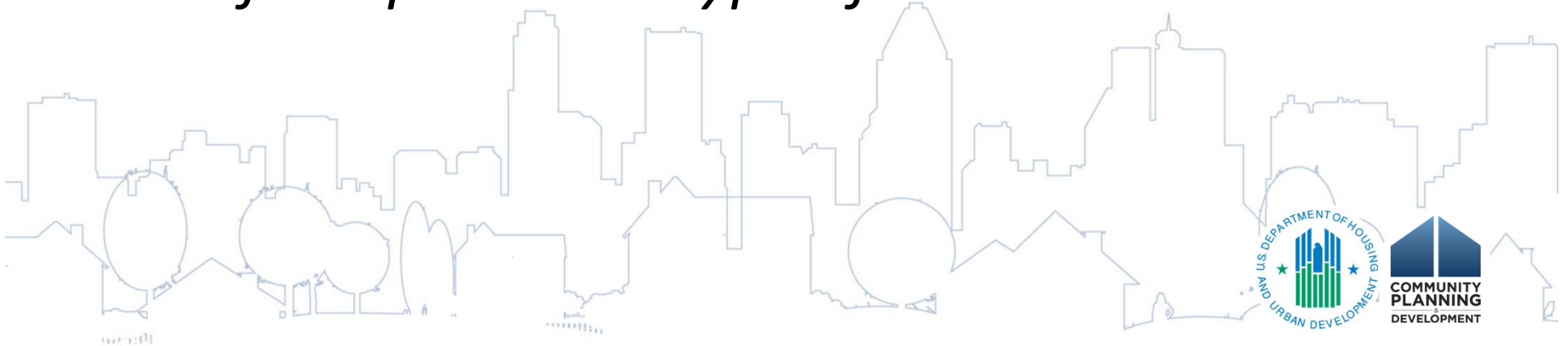
Obtaining the Wage Determination and Adding Classifications



What is a Wage Determination?

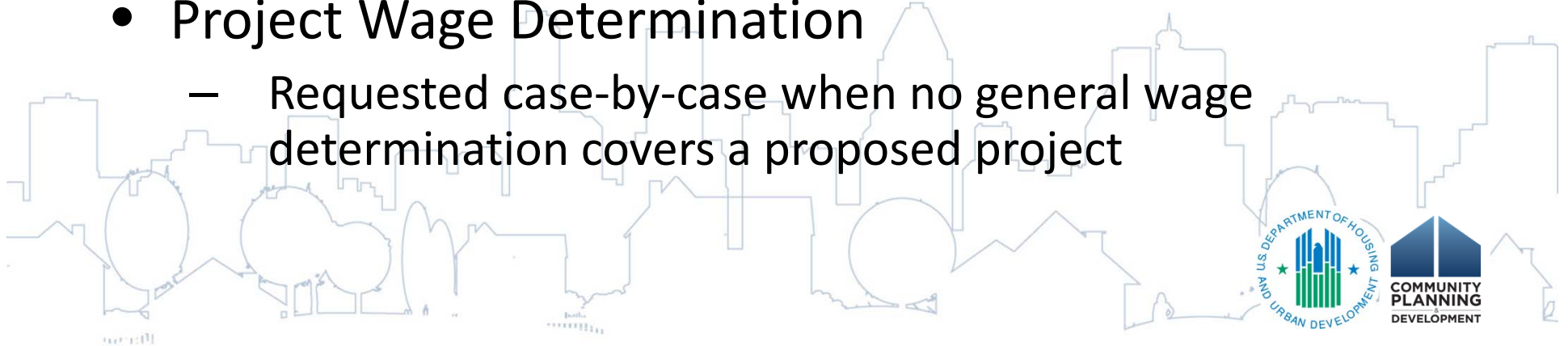
- DOL Definition:

“A list of wage rates and fringe benefit rates for each classification of laborers and mechanics determined by DOL to be prevailing in a given area for a particular type of construction”



Types of Wage Determinations

- General Wage Determination
 - Reflects rates that are prevailing in a specific geographic area for a specific type of construction
 - Based on traditional labor market at county level
 - Details base wage and fringe benefits by labor category
- Project Wage Determination
 - Requested case-by-case when no general wage determination covers a proposed project

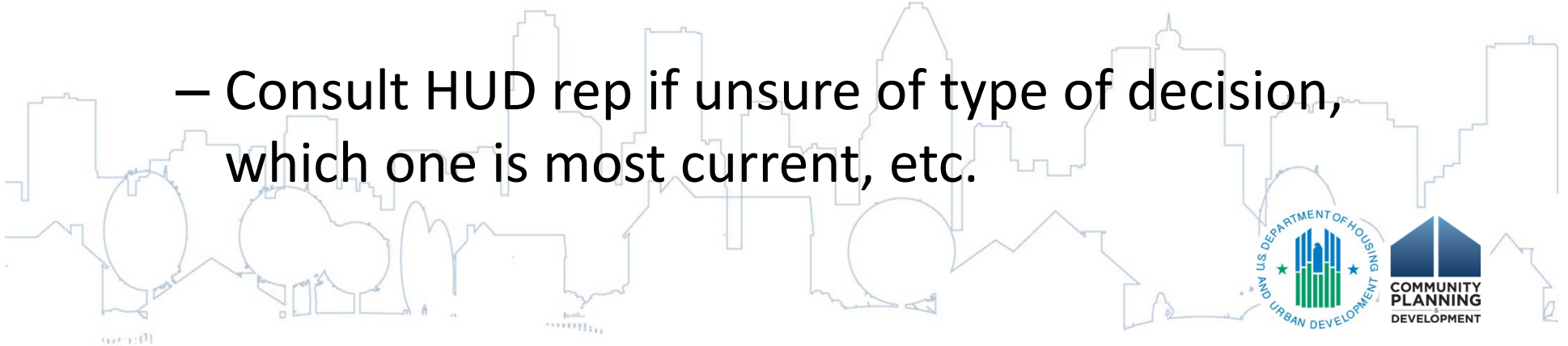


Where Do I Get a Wage Determination?

- Grantees are not required to get wage determination directly from HUD...

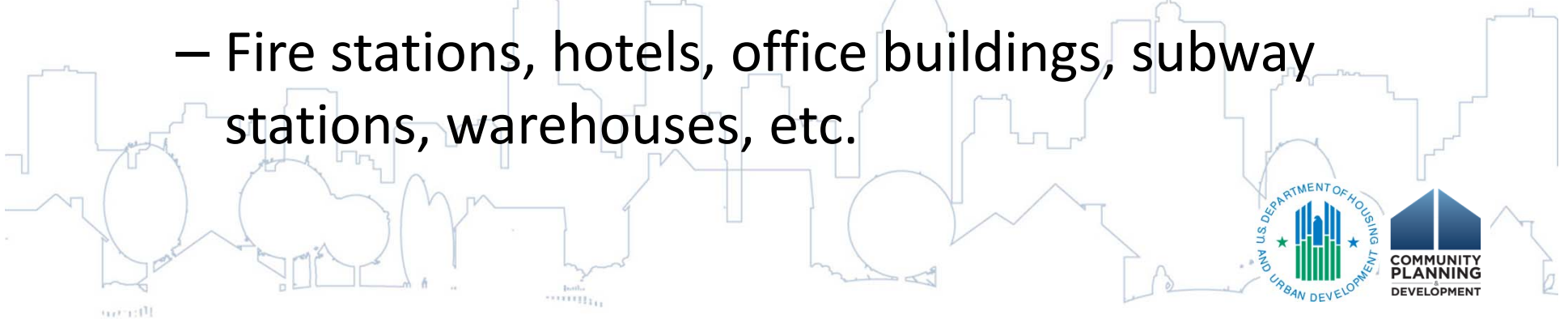
Can get online at www.wdol.gov

- Consult HUD rep if unsure of type of decision, which one is most current, etc.



Construction Categories/Types

- Residential
 - Projects of up to four (4) stories in height
 - Includes all incidental items
- Building
 - Residential projects of five (5) or more stories
 - Fire stations, hotels, office buildings, subway stations, warehouses, etc.



Construction Categories/Types, *cont.*

- Heavy
 - Antenna towers, canals, chemical complexes, dams, docks, etc.
- Highway
 - Roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas not incidental to building or heavy construction



Choosing The Right Wage Determination

- Determine the scope of the project and select a construction category that best fits
- Evaluate:
 - Are all components “incidental” to the primary construction?
 - Are there “substantial” items that are separate and distinguishable?
- Consult with HUD Labor Relations Representative for assistance



Project Components: Incidental vs. Substantial

- Incidental: Uses same wage determination as entire project
 - Function: Does not alter overall character of project; AND
 - Cost: Is not >20% of total project cost
- Substantial: Requires an additional schedule of wages for project
 - Function: Alters overall character of project; OR
 - Cost: >20% of overall project cost OR \geq \$1 million

Multiple Schedules

- The contract must clearly state the portions of the project that are subject to each wage decision
- All wage decisions must be posted
- Prime contractor must ensure all employees are paid in accordance with appropriate determination
- Payrolls must demonstrate compliance with all schedules



Adding Labor Classifications

- Sometimes necessary to add classifications on a wage statement
- Initiate process only after contract award (best practice is to work with architect/engineer prior to bidding)
- Grantee must request an additional classification and wage rate if the work classification needed is not in the wage decision
 - First determine whether there is a classification similar enough to be used
 - Workers affected or their representatives must agree with the proposed wage



Conditions for Approving Additional Classifications

- Classification will be used in the county where the project is located
- Work to be performed is not already performed by another classification already on the wage decision
- Proposed wage rate is “greater than or equal to” the lowest rate for the same trade classifications in the wage decision



Process for Additional Classifications Request

1. Prime contractor (or subcontractor through the prime) identifies classification and recommends a wage rate to the local grantee
2. Grantee discusses with HUD Labor Relations Staff to avoid any delays or problems
3. Local grantee submits written request to HUD Labor Relations staff



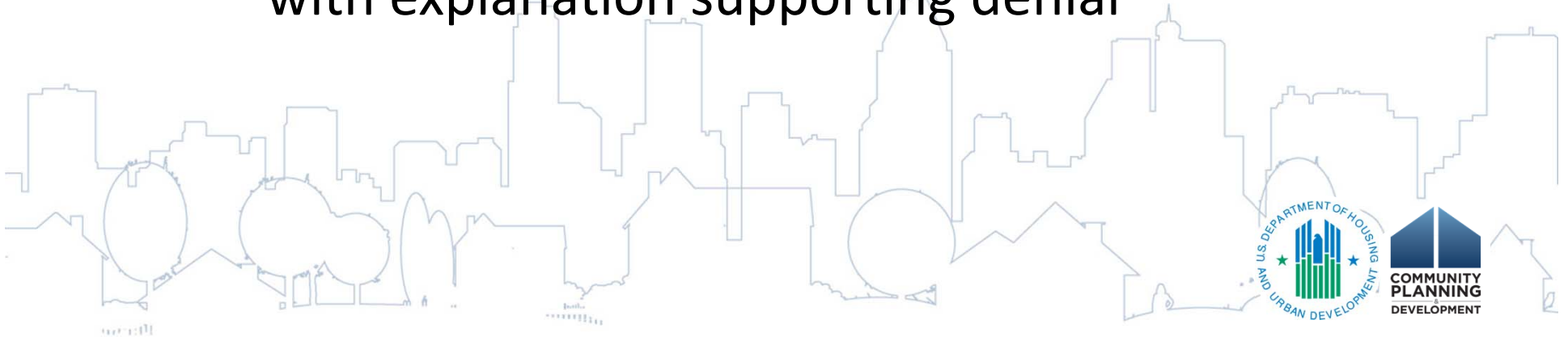
Process for Additional Classifications Request, cont.

4. HUD will review the request

- HUD approves then refers to DOL for final approval

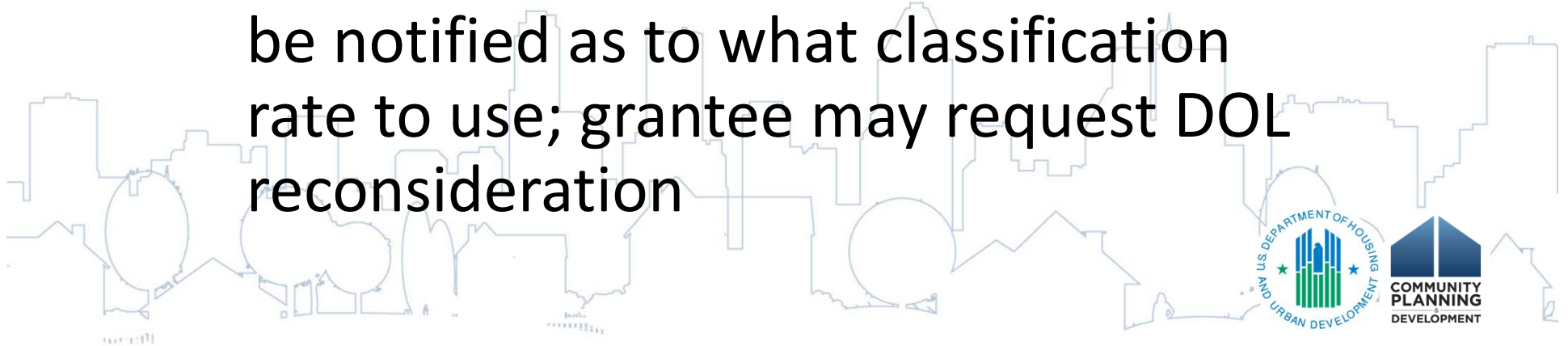
OR

- HUD does NOT approve then refers to DOL with explanation supporting denial



Process for Additional Classifications Request, *cont.*

5. DOL will review the request
 - DOL approves: Classification must be posted at job site with approval notice and wage decision
 - DOL does NOT approve: Grantee will be notified as to what classification rate to use; grantee may request DOL reconsideration



Summary

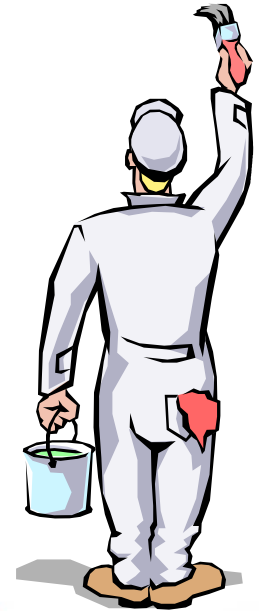
Important Points to Remember:

- Grantees should select one category of construction that best fits their project to avoid multiple wage decisions
- Before requesting an additional classification a grantee should:
 - Be certain that it meets all three (3) conditions for approval
 - Consult with HUD Labor Relations Staff before requesting the classification if not sure





Ensuring Compliance



Grantee's Activities

- Before Construction
 - Review project documents (scope of work/budget)
 - Conduct pre-construction conference (optional)
- During Construction
 - Site interviews with all trades
 - Review of weekly payrolls
- After Construction
 - Underpayments
 - Misclassification of labor category
 - Investigations



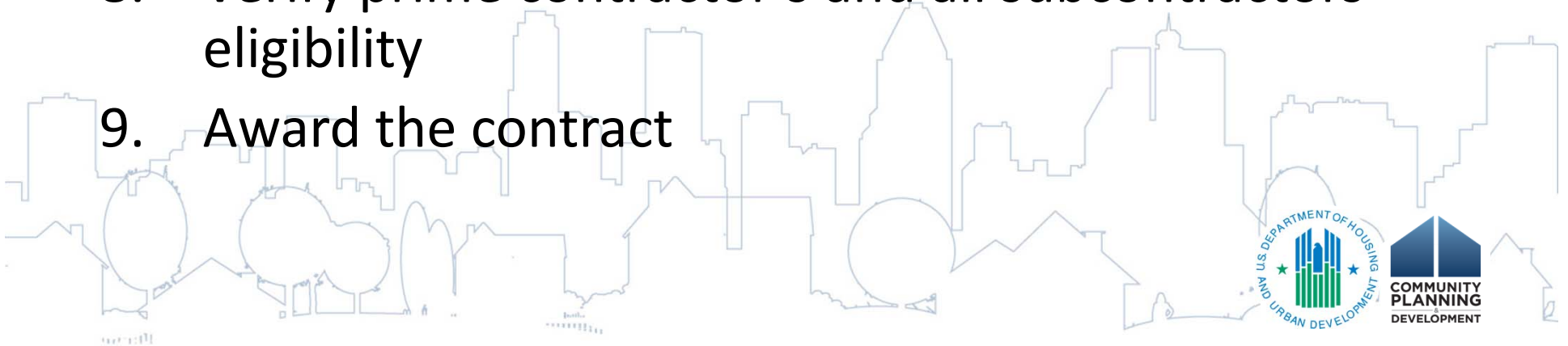
Before Construction: Prepare the Bid Package

1. Determine Davis-Bacon applicability
2. Make a list of labor classifications that will be used for the project
3. Obtain the appropriate wage determination before the bid is advertised
4. Review wage decision to ensure it covers all classifications
5. Ensure bid documents include labor standard provisions and appropriate wage decision



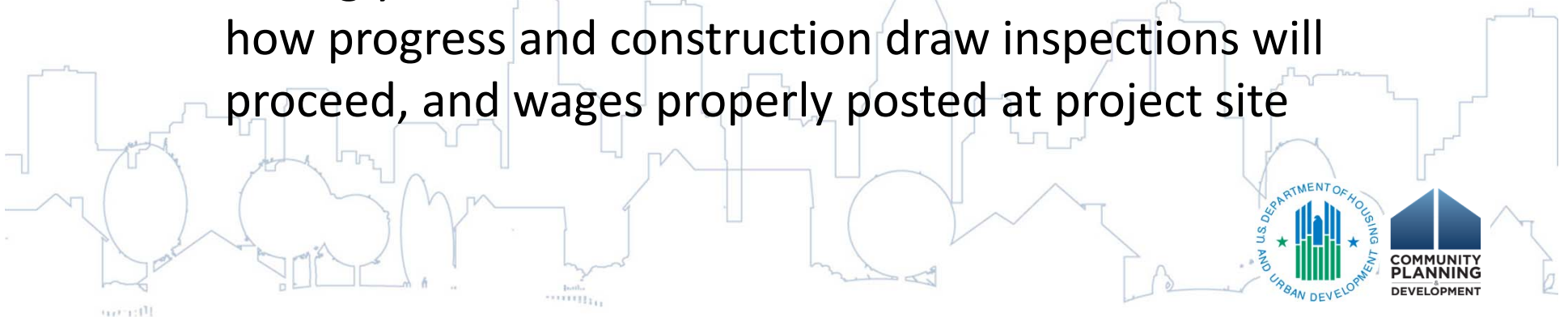
Before Construction: **Bid Package, *cont.***

6. Indicate in the bid documents that the contract is covered by Davis-Bacon, and that not less than the wages included in the wage determination may be paid
7. Check for any modifications to the wage decision 10 days before bid opening
8. Verify prime contractor's and all subcontractors' eligibility
9. Award the contract



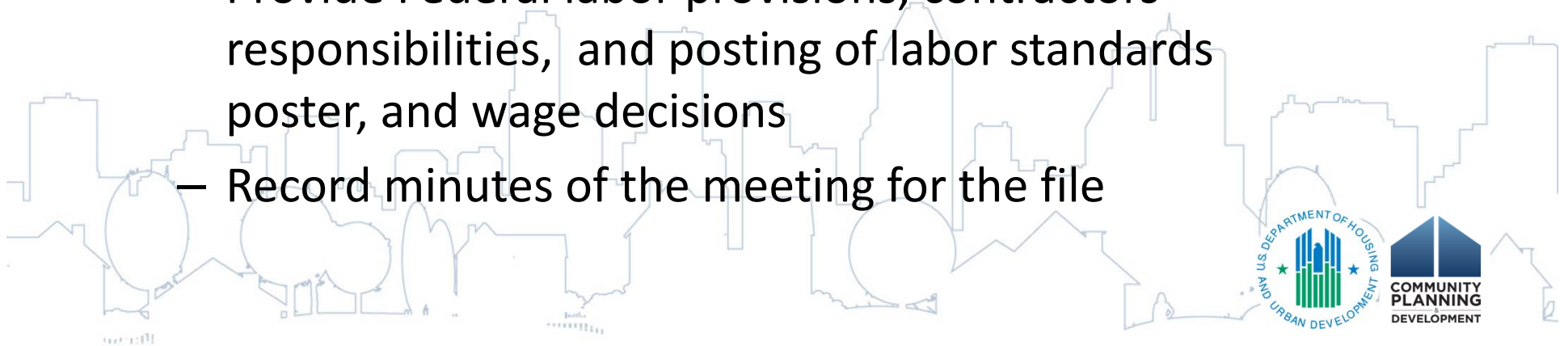
Before Construction: Pre-Construction Conference

- Pre-construction conferences optional; no longer required by HUD
 - Not needed for labor purposes if contractor has sufficient good experience with DBA-covered projects
 - Good idea if contractor does not have DBA experience or past issues with compliance
 - Strongly recommended to establish schedule of work, how progress and construction draw inspections will proceed, and wages properly posted at project site



Before Construction: Pre-Construction Conference

- Key elements of pre-construction conference
 - Invite grantee, contractor, foreman, person who prepares payroll, subcontractors
 - Review statement or scope of work to confirm that all parties understand expectations, labor categories and site protocols for interviews
 - Provide Federal labor provisions, contractors' responsibilities, and posting of labor standards poster, and wage decisions
 - Record minutes of the meeting for the file



During Construction: Documentation

- Establish a labor standards file for weekly payrolls
- Separate files for each applicable contract or project
- Project file should include:
 - Applicable wage determinations and additions
 - Copies of correspondence
 - Pre-construction minutes (if any)
 - Prime and subcontractor contracts
 - Weekly payrolls
 - Employee interviews



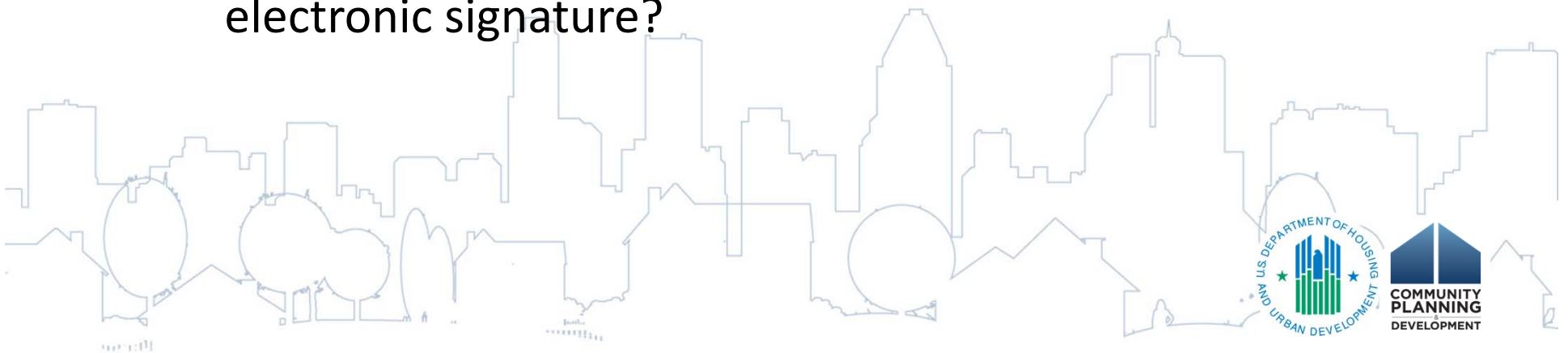
During Construction: Documentation , *cont.*

- Employee fringe benefit documentation
- Payroll Statement of Compliance signatures
- Documentation of on-site inspections
 - Weekly site log of trades throughout construction period
 - Evidence of labor posters and wage decisions posted on job site
 - Schedule of construction progress meeting and construction draw inspections



During Construction: Review Weekly CPRs

- Review Weekly payrolls (Certified Payroll Reports)
 - Are hours and wages properly reported?
 - Are fringe benefits paid correctly?
 - Are apprentices identified with certifications attached?
 - Is the Statement of Compliance completed?
 - Is the CPR signed in ink OR through the proper use of electronic signature?

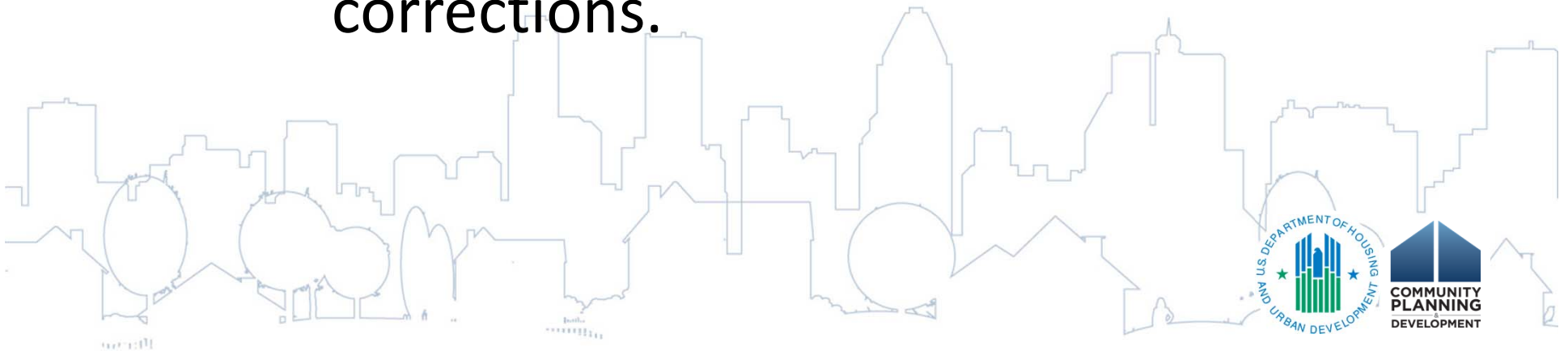


Exercise #2

Payroll Reports

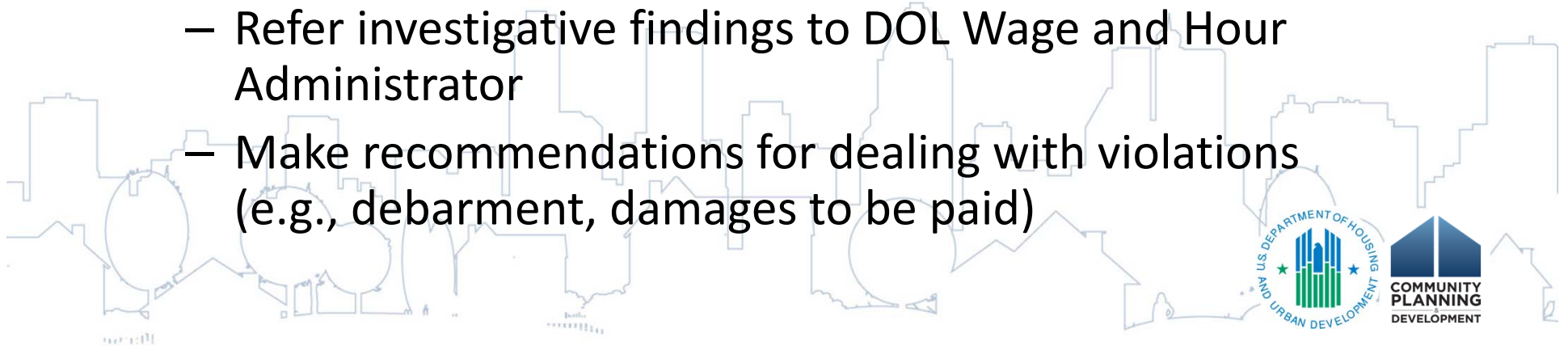
Part A - Work as a group to prepare a list of items that must be reviewed to ensure compliance.

Part B - Review completed payroll report to identify mistakes and make necessary corrections.



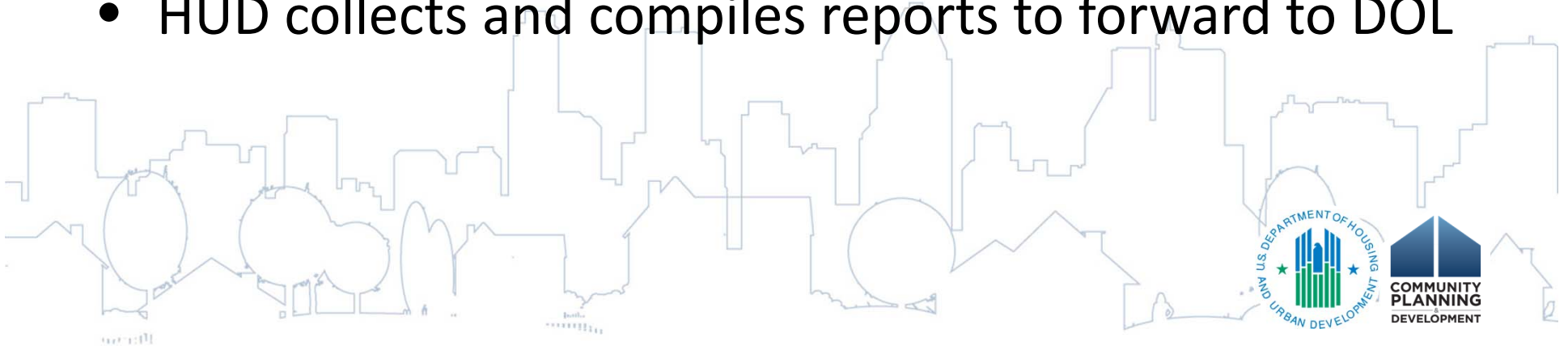
During Construction: Submit Enforcement Reports

- Employer-Based Enforcement Reports
 - Where an employer underpays its employees by \$1,000 or more, or
 - Violations appear willful or aggravated
- Serves three (3) purposes:
 - Inform Secretary of Labor of enforcement actions successfully completed
 - Refer investigative findings to DOL Wage and Hour Administrator
 - Make recommendations for dealing with violations (e.g., debarment, damages to be paid)



During Construction: Enforcement Reports, *cont.*

- Semi-Annual Enforcement Reports
 - Reports on all Davis-Bacon labor standards administration and enforcement activities involving all Federal agencies and programs
- See HUD Semi-Annual Report form and instructions (HUD 4710)
- HUD collects and compiles reports to forward to DOL



During/After Construction: Conducting On-Site Interviews

- A component of a grantee's responsibility for conducting investigations
- Interviews should achieve the following:
 - Be representative
 - Ensure confidentiality
 - Occur on work site
 - Highlight discrepancies between interviews and CPRs
 - Account for non-English speaking employees
- Document interviews on Form HUD-11 (Employee Interview Form)

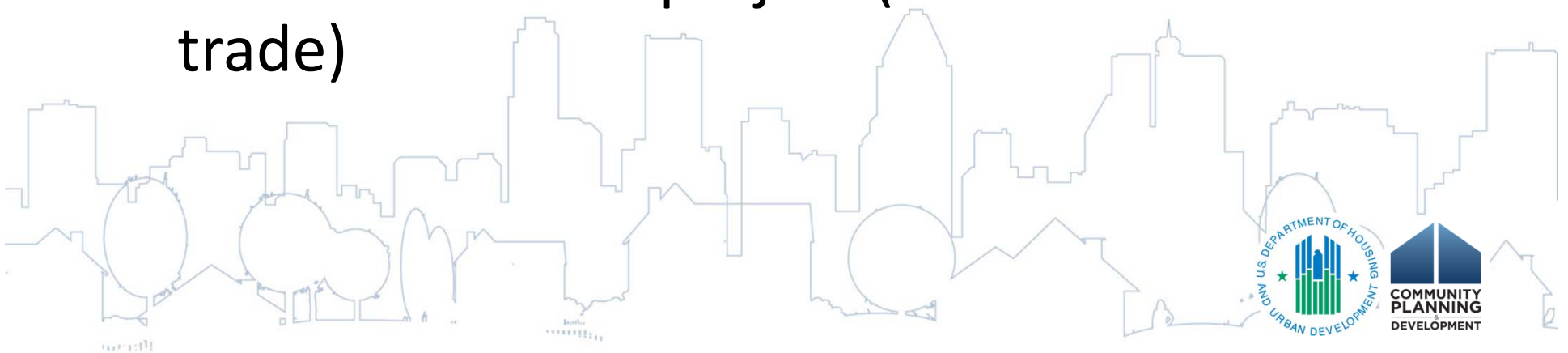


During/After Construction: **On-Site Interviews, *cont.***

- Grantees should target interviews toward projects or groups where violations are alleged/suspected

OR

- Conduct a representative sampling of all laborers on each project (20% of each trade)

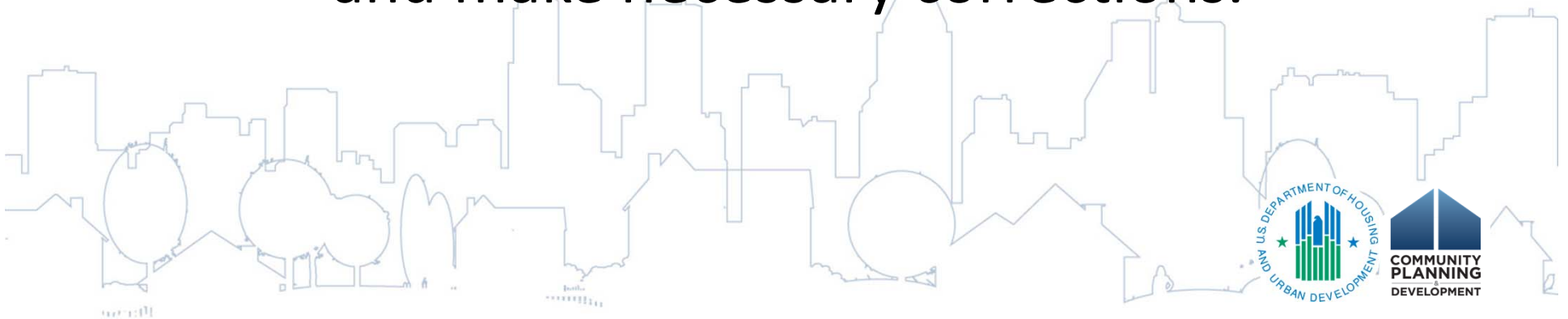


Exercise #3

On-Site Interviews

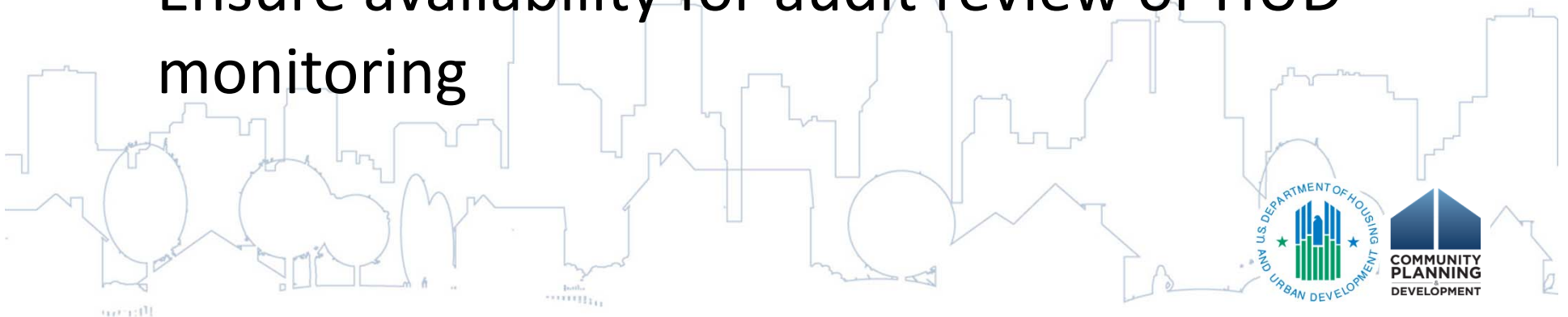
Part A - Work as a group to prepare a list of tips and red flags to ensure an interview is completed properly.

Part B - Review interview to identify mistakes and make necessary corrections.



During/After Construction: Recordkeeping

- Grantees are required to keep files for minimum of three (3) years
- Best Practice = **five (5) years**
 - Consistent with requirements for Consolidated Plan, HOME and CDBG
- Ensure availability for audit review or HUD monitoring



Required Project File Documentation

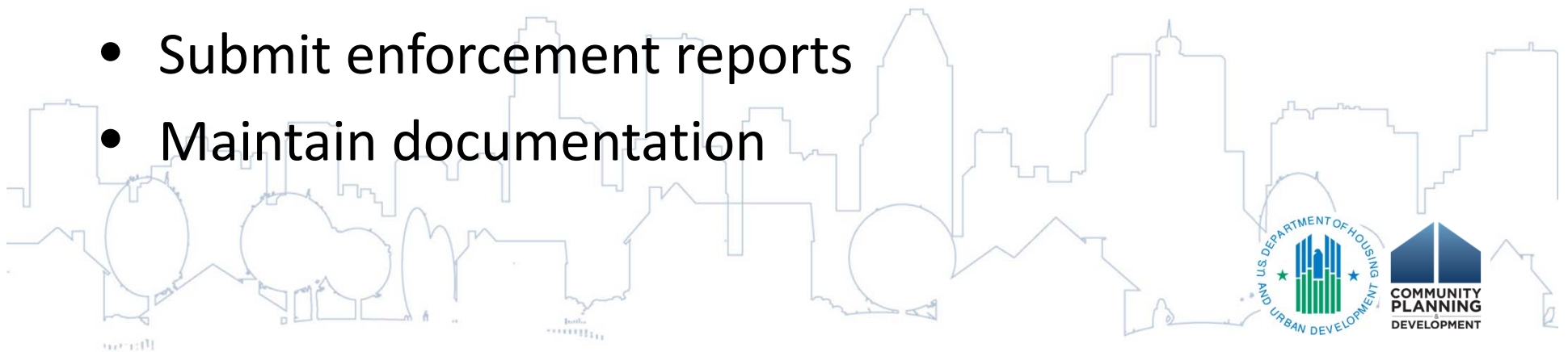
- Primary project information
 - Contract award clearance
 - Prime contractor eligibility verification
 - Pre-construction conference minutes
 - Contract award date
 - 100% completion notice
 - Final payment clearance
 - Confirmation of final payment
- Wage decision
- Additional classifications
- Notice to proceed, if applicable
- Correspondence to and from the contractors and subcontractors
- Escrow Disbursement file
- Contractor's CPR file



Summary

Grantee Responsibilities

- Designate appropriate staff
- Ensure bid documents, contracts & subcontracts contain Federal labor provisions & applicable wage decision
- Review CPRs & confirm discrepancies through interviews
- Submit enforcement reports
- Maintain documentation



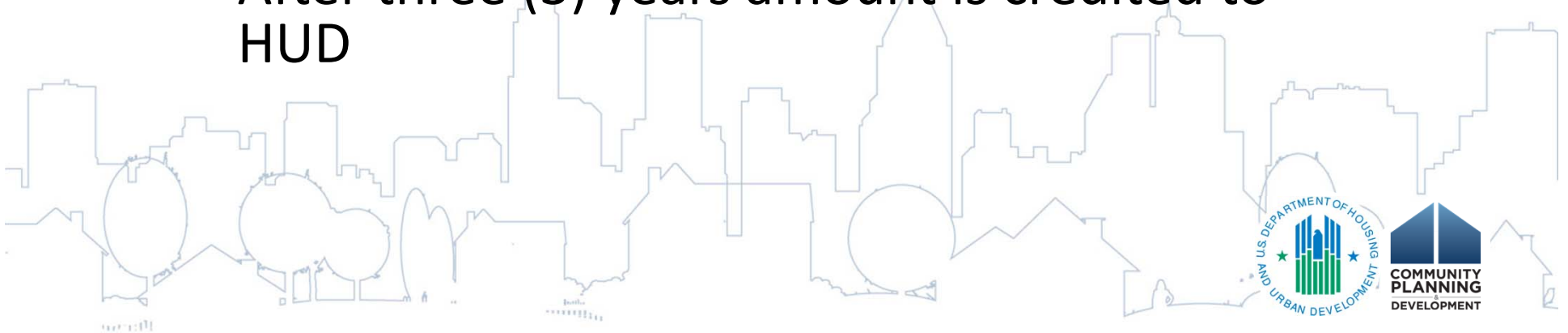


Handling Issues that Arise



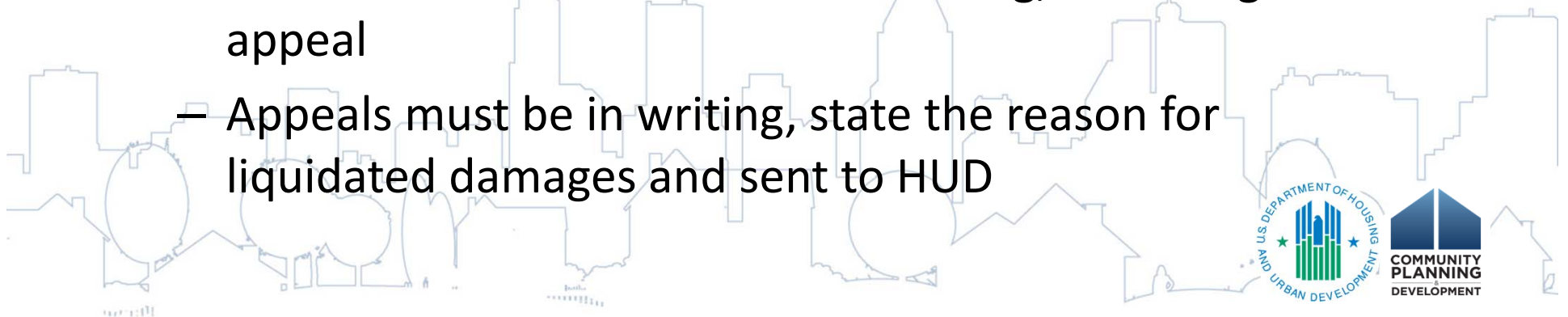
Restitution

- If underpayments occur, contractor or subcontractor must make restitution
- Grantee must attempt to locate employee (certified mail, etc.)
- If workers not found, escrow restitution and recipient will look for three (3) years
 - After three (3) years amount is credited to HUD



Liquidated Damages

- Contractors may also be liable for liquidated damages
 - \$10/day per employee who worked overtime and not paid overtime wages
- CDBG/HOME /NSP \$\$ may be withheld to pay the liquidated damages
 - Contractors must be notified in writing, and of right to appeal
 - Appeals must be in writing, state the reason for liquidated damages and sent to HUD



Report Writing

- Grantee should complete and submit a Section 5.7 Report
 - Provide:
 - Description of violation
 - Disposition of the case
 - A schedule of wages found due
 - Address all requirements and findings
 - Provide sufficient documentation of evidence to support violations
- Must be submitted to appropriate HUD office within sixty (60) days after completion of investigation



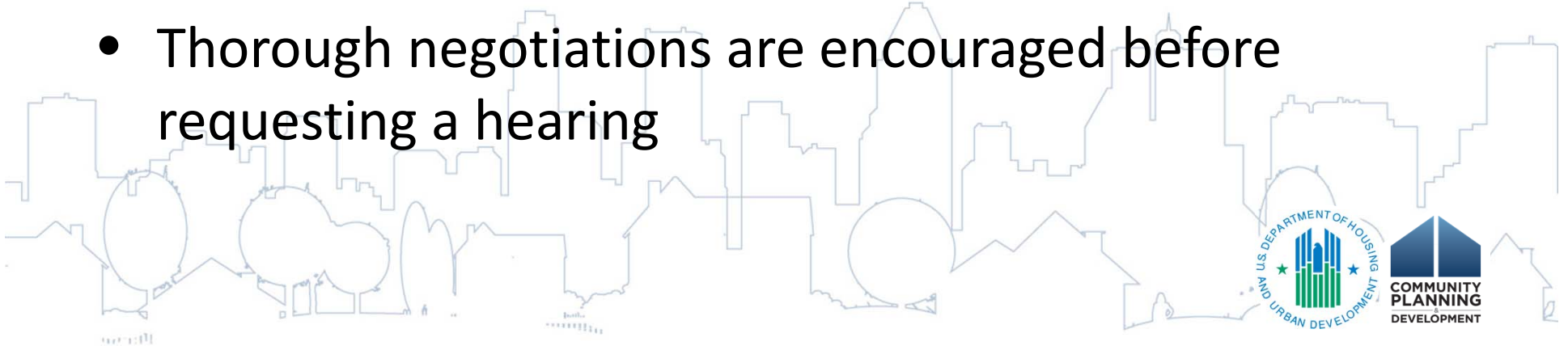
If Prime Contractor Refuses to Pay Wages

- Grantee must notify prime contractor in writing that refusal may warrant sanctions and the file will be referred to HUD
- Grantee should notify HUD immediately if contractor is filing for bankruptcy
- HUD reviews file to determine if sufficient evidence to submit to the National DOL office
- If findings fall in a “gray area,” HUD will meet with grantee and contractor to negotiate a resolution



Disposition of Withheld Funds

- Retention of a portion of contract funds—standard practice for federally assisted projects
- Grantee may withhold as much as necessary to pay full amount of wages required
- Refusal-to-pay cases resolved administratively by a hearing before a DOL administrative law judge
- Thorough negotiations are encouraged before requesting a hearing



Disbursement of Funds

- Withheld funds are disbursed by the agency that conducted the investigation
 - DOL (DOL Wage and Hour Division)
 - Grantee
 - Once HUD approves release of funds
 - If HUD originally requested hold of funds, Grantee must wait for HUD's written notification before disbursing funds
 - Grantee may cross-withhold funds from other DBRA/CWHSSA contracts *held by the same prime contractor* if contract under violation has insufficient funds



Debarment

- Contractor or subcontractor committed an aggravated or willful violation of Davis-Bacon and Related Acts
- Declared ineligible for Federal projects for three (3) years
- Payment of back wages does not eliminate possibility of debarment
- Investigations for debarment should be sent to the HUD Labor Relations Officer



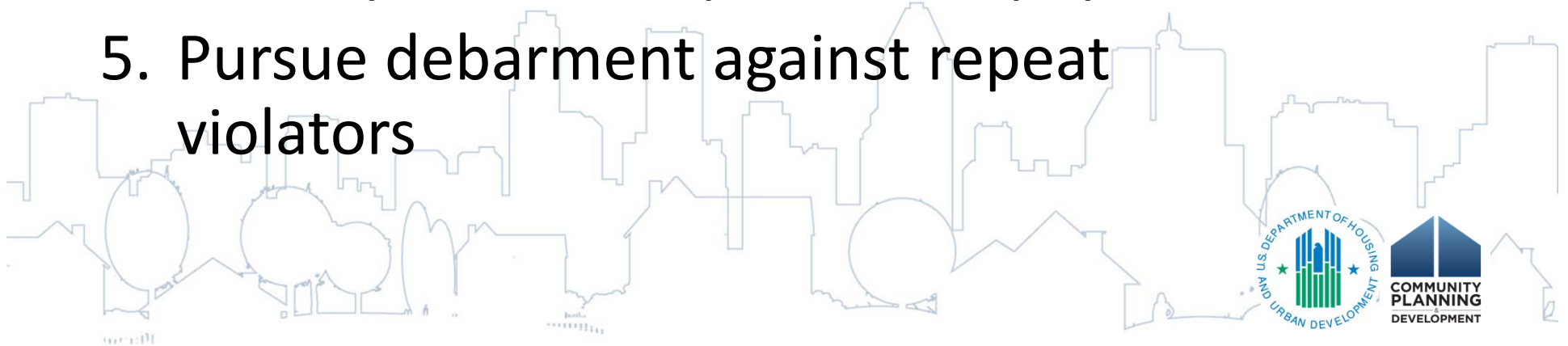
Summary

- If willful violations have been committed, contractor or subcontractors may be subject to sanctions; debarment and liquidated damages
- In cases of refusal to pay back wages, the grantee should withhold sufficient funds to pay the employees and notify the HUD Labor Relations Officer



HUD's 5 Key Labor Standards Objectives

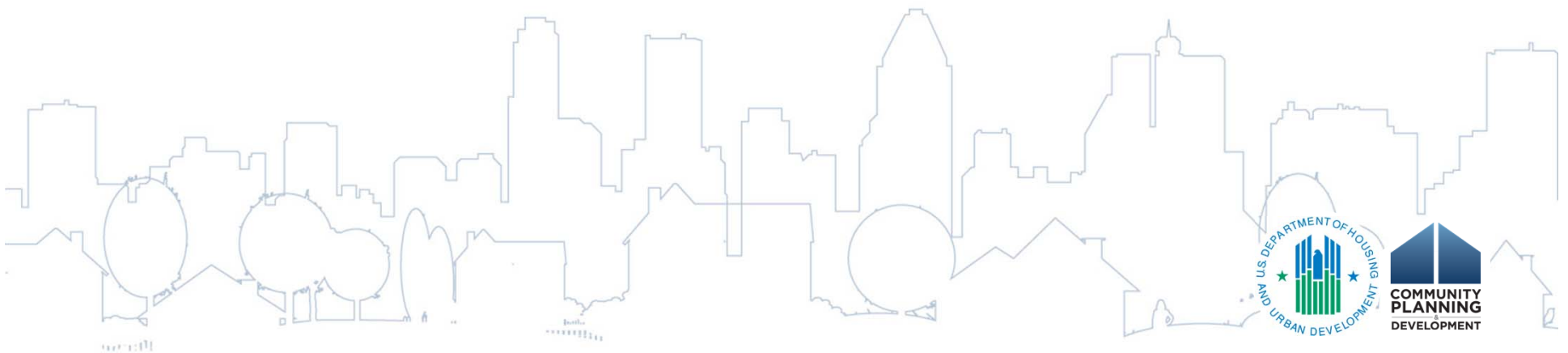
1. Apply Federal labor standards properly
2. Support contractor compliance through education and guidance
3. Monitor contractor performance
4. Identify & follow-up on underpayments
5. Pursue debarment against repeat violators



Exercise #4

What Do I Do?

- How to handle various issues and how to resolve the situation.





Conclusion

