

# DAVIS-BACON & HOME

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## Overview

This manual describes the policies and procedures that must be followed when undertaking construction projects funded with Community Development Block Grant (CDBG) and/or HOME Investment Partnerships (HOME) Program funds to ensure compliance with the labor laws and requirements.

## Chapter 1: Labor Laws and Requirements

*Some states have adopted their own labor laws. Please consult the State and Federal labor laws and follow whichever one is stricter.*

- ✓ The labor laws that may apply to CDBG- and HOME-funded construction work include the following:
  - The **Davis-Bacon Act** (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7). Davis-Bacon labor standards requirements are triggered at different thresholds under the CDBG and HOME Program, which is further discussed later in this manual. These labor standards require that workers receive no less than the prevailing wages being paid for similar work in the same area. HUD should be contacted if there is any situation where the applicability of Davis-Bacon is in question.
  - The **Copeland Anti-Kickback Act** (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers' pay be permissible, and that contractors **and subcontractors** maintain and submit weekly **certified** payrolls.
  - The **Contract Work Hours and Safety Standards Act (CWHSSA)** (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to prime contracts over \$100,000 and any subcontracts let under the covered prime contract. CWHSSA requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$10 per day per violation).
- ✓ Additional information is available on HUD's Office of Labor Relations web site at [www.hud.gov/offices/olr](http://www.hud.gov/offices/olr) and the forms referenced herein are available at HUDClips at <http://www.hud.gov/offices/adm/hudclips/>.

## Applicability of Labor Laws to CDBG and HOME Projects

### Thresholds and Regulatory Citations

- ✓ The labor standards provisions in HUD program statutes vary considerably meaning that there are significant differences in whether and to what extent prevailing wage requirements are applicable under these programs.
- ✓ This section discusses some of the differences and explains how the language is interpreted for applicability purposes under CDBG and HOME. This section refers to the specific language in each statutory provision; for the complete text of the statutory provision, please see the Davis-Bacon Act or contact the HUD Labor Relations Specialist for your area.

- ✓ **CDBG.** Federal labor standards provisions apply to construction work financed in whole or in part with CDBG funds of more than \$2,000. (Section 110, Housing and Community Development Act of 1974, as amended.) Specifically:
- “**...construction work financed...**”: CDBG funds (i.e., Title I funds) can be used to finance activities other than “construction work,” which uses do not trigger Davis-Bacon requirements. For example, CDBG can finance real property acquisition, purchase of equipment, architectural and engineering fees, other services (e.g., legal, accounting, construction management), and other non-construction items such as furniture, business licenses, real estate taxes, and tenant allowances for such items. On the other hand, “financing” is not limited to the act of paying for construction work directly. “Financing” can mean, for example, using CDBG assistance to reduce the interest rate on a construction loan (including certain collateral accounts). Generally, “financing” also means using CDBG funds to provide permanent financing (take-out loan) following construction.
  - “**...in whole or in part...**”: Notice that the statute anticipates that CDBG funds may be used in conjunction with other funding sources. If CDBG funds are used to finance only a portion of the construction work, labor standards are applicable to the *entire* construction work.
  - “**All laborers and mechanics employed by contractors and subcontractors...**”: The covered classes of workers are those employed by “contractors and subcontractors.” Consequently, the labor standards provisions *do not* apply to employees of the grantee/PJ (force account workers) who are not employed by contractors or subcontractors but that may be engaged on an otherwise covered project. Note that the construction work is covered but force account workers are excluded.
  - “**...shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.**” This language represents an exemption for residential property that contains up to 7 units.

Typically, single-family homeowner properties are excluded under this exemption. However, *property* is not limited to a specific building. Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project. Examples of 8 or more unit properties may include: 5 townhouse buildings side-by-side which consist of 2 units each, 3 apartment buildings each consisting of 5 units and located on one tract of land, or 8 single-family (not homeowner) houses located on contiguous lots.

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

✓ **HOME Program.** The applicability of labor standard provisions under the HOME program is very different than under CDBG. Labor standards provisions apply to any contract for the construction of 12 or more HOME-assisted units. (Section 286, National Affordable Housing Act of 1990, as amended.) Specifically:

- **“...affordable housing with 12 or more units assisted with funds made available under this subtitle...”**: Unlike CDBG, the standard for coverage is “assisted” not “financed” – which provides for much broader application. This means that the Davis-Bacon requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide down payment assistance to individual homebuyers. (See also HUD Regulations at 24 CFR 92.354(a)(2).)

This also recognizes that HOME projects can contain units that are not assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, HUD uses the number of units identified as “HOME” units under the program definition whether determined on a pro-rata basis, specific designation or other means permitted by HUD’s Office of Community Planning and Development (CPD).

Note also that once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project that **are not** assisted with HOME funds.

- **“Any contract for the construction of affordable housing with 12 or more units assisted with funds...”**: Davis-Bacon requirements are applicable to *contracts for construction* covering 12 or more HOME-assisted units. Davis-Bacon requirements do not follow “construction work” or “projects”. This factor has **two** implications:
  - First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.)
  - Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.
- **Sweat Equity**: HOME provides for a sweat equity program (see NAHA Section 255) that permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

✓ Two circumstances that may arise under the HOME Program require further clarification:

- **Group Homes:** Under certain conditions (See - CPD Notice 94-01 concerns risk analysis, not group homes.), a group home may be counted as a single unit for HOME assistance purposes.
- **Homeownership:** If a pre-construction agreement is made with the owner/developer of a housing project with 12 or more units where HOME funds will be used to assist homebuyers with buying the housing, **and** the construction contract covers 12 or more HOME-assisted units, Davis-Bacon requirements apply.

### Volunteer Labor & Employees of the Grantee/PJ/PJ

- ✓ Most HUD program statutes contain an exclusion from Davis-Bacon requirements when using bona-fide volunteers. HUD Regulations at 24 CFR, Part 70 provide definitions and additional guidance concerning the use of volunteers. Generally, volunteers are defined as individuals who:
  - Perform services for a public or private entity for a civic, charitable, or humanitarian reason, without promise, expectation, or receipt of compensation for services rendered;
  - May be paid expenses, reasonable benefits, or a nominal fee for such services for which the individual volunteered; and
  - Are not otherwise employed at any time in the construction work.
- ✓ Generally, labor standards do **NOT** apply to employees of state or local government (“force account workers”) that may be engaged on an otherwise covered project under CDBG or HOME.

## Definitions

The following terms are important to know when understanding the statutory and regulatory provisions of the Davis-Bacon and Related Acts:

**Apprentice.** An apprentice is a person employed and individually registered in a bona fide apprenticeship program, including Step-Up apprenticeship programs designed for Davis-Bacon - covered construction work. Bona fide programs are those that have been registered with the DOL Bureau of Apprenticeship and Training (BAT) or with a BAT-recognized State Apprenticeship Agency (SAC).

- **Probationary apprentice.** A person in the first 90 days of probationary employment as an apprentice in a bona fide apprenticeship program but who has not yet been formally registered in such program may be considered an “apprentice” provided that the BAT or SAC has certified that such person is eligible for probationary employment as an apprentice.
- **Pre-apprentice.** A person who is employed as a “pre-apprentice,” that is, in a preparatory position, which may result in registration in an apprenticeship program, is not considered to be an “apprentice.”

**Employee.** Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship that is alleged to exist between a contractor or subcontractor and such a person.

**Fringe Benefits.** Fringe benefits include medical or hospital care; pensions on retirement or death; unemployment benefits; life insurance; vacation or holiday pay; defraying costs of apprenticeship or similar programs; or other bona fide fringe benefits. In addition to contributions, fringe benefits may reflect the rate of costs to the employer, which may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible program. Fringe benefits do not include benefits required by other Federal, state, or local laws.

**Laborer/Mechanic.** “Laborers” or “mechanics” are those individuals whose duties are manual or physical in nature and include workers who are performing the work of a trade (e.g., electrician). These terms include apprentices, trainees, helpers and, for contracts subject to CWHSSA, watchmen, and guards.

- **Working Foremen.** Foremen or supervisors that perform construction work and devote more than 20 percent of their time as a laborer or mechanic are treated as laborers or mechanics for labor-standards purposes.
- **Exclusions.** Persons whose duties are primarily administrative, managerial, or clerical are not considered laborers or mechanics.

**Overtime.** Overtime hours are defined as all hours worked in excess of 40 hours in any given work week. Covered overtime hours are those that are worked at the site of the work to which CWHSSA applies. Overtime hours are compensated at not less than one and one-half times the regular rate of basic pay plus the straight time rate of any required fringe benefits.

**Piece rate/piece work.** Persons that are paid a fixed rate for the completion of a unit or action. Compliance with prevailing wage rates is determined by dividing the gross wages earned by the total number of hours worked to calculate the “effective” hourly wage rate. This effective rate must be at least as much as the prevailing wage for the type of work performed. The effective hourly rate must be calculated on a weekly basis.

**Site of Work.** The site of work is limited to the physical place or places where the construction called for in the contract will remain after construction has been completed. The site of work includes other adjacent or virtually adjacent property used by the contractor/subcontractors in the construction of the project (e.g., fabrication sites) provided that they are dedicated exclusively or nearly so to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

**Trainee.** A trainee is a person registered and receiving on-the-job training in a construction occupation pursuant to a training program approved in advance by the BAT.

**Wage Determination or Wage Decision.** This document lists prevailing wage rates, as determined by the DOL, for construction laborers and mechanics in various work classifications within a particular geographic area.

**Wages.** The term “wages” refers to the basic hourly rate of pay plus any contribution irrevocably made by a contractor or subcontractor (employer) to a bona fide fringe benefit fund, plan, or program.

## **Chapter 2: The Role of the Local Grantee/PJ**

- ✓ Under the DOL regulations, the prime or general contractor is responsible for full compliance with applicable requirements, including all employers/subcontractors on the project. The CDBG grantee/PJ or HOME grantee/PJ is responsible for the administration and enforcement of the requirements to ensure compliance.
- ✓ A local grantee/PJ should designate a Labor Standards Compliance Officer to perform these duties and other duties involved in the administration and enforcement of the labor standards.
- ✓ Responsibilities for carrying out Federal labor standards include, but are not limited to, the following:
  - Determine the applicability of Davis-Bacon labor standards provisions to the project.
  - Obtain appropriate wage determination, which indicates the current prevailing pay rates for various labor classifications in the area of the project, and ensure that it is included in the bid package and contract documents.
  - Ensure that all bid documents and construction contracts contain appropriate labor standards clauses.
  - Verify the eligibility of the contractor prior to final selection of the contractor.
  - Determine whether a pre-construction conference is needed (optional). A pre-construction conference is no longer required by HUD, but the Grantee/PJ may choose to conduct a pre-construction conference in some circumstances, such as when dealing with contractors unfamiliar with Davis-Bacon requirements. It provides the grantee/PJ the opportunity to review all facets of the project, including Davis-Bacon requirements with experienced and inexperienced contractors.
  - Review weekly payroll reports to verify compliance; including the use of the correct wage rate determination, proper work classification, number of hours worked and the hourly rate of pay for each employee on a project. These reports must be submitted by prime contractors and subcontractors.
  - Monitor construction contractors by conducting site visits to interview employees regarding their wages. Investigate violations of labor standards regulations and make recommendations for contractor suspension/debarment when sufficient evidence of a violation has been documented.
  - Complete and submit the Semi-Annual Enforcement Report form (HUD-4710). The form and instructions for its completion (HUD-4710i) are available on HUD's web site and HUDClips (<http://www.hud.gov/offices/adm/hudclips>).

## **Chapter 3: Bidding and Contracting Requirements**

- ✓ Once it is determined that a construction project is subject to federal labor standards requirements, certain steps must be taken to ensure compliance. Specifically, grantee/PJs must include all applicable labor standards language and the appropriate wage decision in construction bid and contract documents.

### **Wage Rate Decisions**

- ✓ The Davis-Bacon wage decision that applies to a project contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work.
- ✓ The grantee/PJ may access federal wage rate decisions through the internet at [www.wdol.gov](http://www.wdol.gov). Federal wage determinations are generally issued for four characters of construction work: Residential, Building, Heavy, and Highway. It is important to understand the differences when determining which construction character is involved in order to select an appropriate determination.
  - **Residential projects** involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.
  - **Building construction** generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies, and apartment buildings greater than 4 stories high. This includes all construction within and including the exterior walls, both above and below grade.
  - **Heavy construction** is generally considered for all construction not properly classified as highway, residential, or building. Construction of dams, bridges, water, sewer line and flood control projects will typically be categorized as heavy construction.
  - **Highway projects** include construction, alteration or repair of roads, streets, highways, runways, parking areas, sidewalks and most other paving work not incidental to building or heavy construction.
- ✓ If a work classification that is needed for the project does not appear on the wage decision that will be used, the grantee/PJ must request an additional classification and wage rate from HUD. Requests must be made in writing through the grantee/PJ and must meet certain criteria to be approved. HUD will consider whether the requested classification and wage rate may be approved. All requests are forwarded to DOL for final determination.
- ✓ HUD should be consulted if there are questions about properly identifying the type of wage determination and/or modifications.

## Multiple Types of Construction

### “Substantial” Versus “Incidental”

- A project may include construction items that are classified differently with regard to type of construction. If the item is justified as a substantial part of the project, the use of multiple wage determinations may be warranted. More than one type of wage determination is appropriate if items fall into a separate type of construction and will comprise at least 20% of the total project cost and/or cost \$1 million dollars.
- Generally, if the items fall into a separate type of construction, and will be less than 20% of the total project cost and will cost less than \$1 million dollars, they are considered incidental to the primary type of construction involved on the project. A separate wage determination is not applicable, unless there is an established local area practice to the contrary.
- Where multiple wage determinations are used the grantee/PJ must incorporate determinations into the bid specifications/contract and provide instructions specifying the contract work to which each wage determination applies.
- Such instructions are needed not only when the wage classifications for different types of construction (and/or locations) are in separate “Wage Decisions,” but also where wage determinations for various types of construction (and/or counties) have been consolidated into a single “Wage Decision.” (This has often been done for administrative convenience in issuing the Wage decision)

## Labor Clauses and Wage Decisions in Bid and Contract Documents

- ✓ The labor clauses, which are contained in HUD-4010, and the applicable wage rate decision must be a physical part of the bid package or incorporated into the bid package by reference. The labor clauses obligate the contractor to comply with the Davis-Bacon wage and reporting requirements, and provide remedies and sanctions should violations occur.
  - Ten days prior to bid opening, the grantee/PJ must check to see if the wage decision has been modified. If so, grantee/PJs should notify all potential bidders appropriately in conformance with local procurement procedures.
- ✓ If the contract is not awarded within 90 days after the bid opening, modifications to the wage determination(s) must be incorporated into the contract, unless DOL approves an extension of the 90-day period. The grantee/PJ must request any such extension through HUD.

### **Chapter 4: Enforcement of Requirements during Construction**

During construction, the grantee/PJ is responsible for enforcing the labor standards requirements described in this chapter. This includes good construction management techniques (e.g., pre-construction conferences, issuance of notices to proceed, and payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews.

#### **Pre-construction Conference**

- ✓ A discussion of Federal labor standards requirements is no longer required at pre-construction conferences. However, the grantee/PJs may find it beneficial to include labor standards requirements in some cases.
- ✓ The grantee/PJ can use this opportunity to clearly present the Federal statutory compliance requirements as well as performance expectations. Items that should be covered at the pre-construction conference include, but are not limited to:
  - Provide and review with the contractor a copy of the “Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.” This guide can be downloaded at: <http://www.hud.gov/offices/olr/library.cfm>.
  - Explain that the contractor must submit weekly payrolls with Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for obtaining and reviewing payrolls and Statements of Compliance from all subcontractors.
  - Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact HUD immediately to request an additional classification.
  - Explain that employee interviews will be conducted periodically during the project.
  - Emphasize that a copy of the applicable wage rate decision and the Davis-Bacon poster (WH-1321) must be posted at the job site.
  - Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency recognized by BAT. If apprentices or trainees are to be used, the contractor must provide the grantee/PJ with a copy of the individuals’ registration in the apprenticeship program.
  - If the prime contract amount is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, and that failure to pay workers at least time and a half for overtime hours worked violates the Contract Work Hours and Safety Standards Act. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
  - Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.

- Give the contractor posters that provide information to their employees regarding their rights when working on a Federal or federally assisted construction project. These posters and others are required and available at: <http://www.dol.gov/elaws/posters.html> and <http://www.dol.gov/whd/programs/dbra/wh1321.htm>.
- The grantee/PJ should also describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making final payment to the contractor. Remind the contractor that willful violations may be subject to contract termination and debarment from future contracts for up to three years. Failure to pay specified wages may result in contractor payments being withheld to satisfy liabilities for unpaid wages and liquidated damages.

### Notice to Proceed

- ✓ Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general contractor to provide the date that work can begin and contract time for completion. The Notice to Proceed marks the start of contract performance and, if applicable, provides the basis for assessing liquidated damages (other than CWHSSA liquidated damages). The construction period and basis for assessing liquidated damages specified in the Notice to Proceed must be consistent with those sections of the contract documents. Note, however, that issuance of a Notice to Proceed is not mandatory. If a Notice to Proceed is not issued, an alternate method to provide notification of construction commencement is recommended.

### Payroll Review

- ✓ Once construction is underway, the prime/general contractor must complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project.
- ✓ To ensure compliance, certified payroll reports should be submitted promptly by the prime/general contractor to the grantee/PJ. .
- ✓ The DOL payroll form (WH-347) does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations.
- ✓ The Statement of Compliance must be completed and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation). The contractor can submit the documentation one of two ways:
  - Signed by an owner or officer of the firm or an authorized representative of the owner or officer of the company. The signature must be an original signature and the PJ should retain the original copy. The prime contractor and any subcontractors must maintain a copy of the payrolls for no less than 3 years following completion of the work.
  - Certified and submitted electronically through the use of an acceptable electronic payroll system. Electronic submission does not include the signed pdf files, faxed or emailed copies.

## CHAPTER 4: ENFORCEMENT OF REQUIREMENTS DURING CONSTRUCTION

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- Neither DOL nor HUD/OLR has endorsed any particular vendor or product for electronic submission. There are several vendors that offer products managing electronic payroll certification, submission, compliance and retention.
- ✓ The payrolls should be reviewed by the prime contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and, potentially, liquidated damages that may be assessed for overtime violations.
- ✓ Grantee/PJs should review/spot-check payrolls to ensure that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no discrepancies or violations. Items to be spot-checked should include:
  - The correct classification of workers;
  - A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
  - A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
  - Review of deductions for any non-permissible deductions
  - The Statement of Compliance has an original signature by the owner, officer of the firm or authorized representative.
  - The Payroll and Statement of Compliance are originals or are certified and submitted electronically. Photocopies are not permissible.
- ✓ Where underpayments of wages have occurred, the grantee/PJ is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. Where corrections are made, ensure that they are reported on a certified payroll report.

### **On-Site Interviews**

- ✓ The labor standards requirements include periodically conducting job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.
- ✓ Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a reasonable judgment as to compliance.
- ✓ Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).
  - The interview should take place on the job site and be conducted privately (this is a one-on-one process). Interviews are confidential.
  - The interviewer should observe the duties of workers and take notes before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.

## CHAPTER 4: ENFORCEMENT OF REQUIREMENTS DURING CONSTRUCTION

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- To initiate the interview, the authorized person shall:
  - Properly identify himself/herself;
  - Clearly state the purpose of interview; and
  - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
- When conducting employee interviews, the interviewer should pay particular attention to:
  - The employee's full name;
  - The employee's permanent mailing address;
  - The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
  - The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
    - The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
    - If it appears the individual may be underpaid, the interviewer should closely question the worker:
      - (a) Ask for any records.
      - (b) Arrange to re-interview the employee, if appropriate.
  - Enter the worker's statement of his/her classification.
  - Observe duties and tools used:
    - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
    - If there are discrepancies, detailed statements are necessary.
  - Enter any comments necessary.
  - Enter date interview took place.
  - Sign the HUD-11.
- ✓ The Record of Employee Interview form (HUD-11) must be compared to the corresponding contractor and subcontractor payroll information.
  - If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form and signed by the person who made the comparison.
  - If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form. Appropriate steps must be taken to resolve the discrepancies.

## **Progress Payments**

- ✓ Upon receipt of requests for payment during construction, the grantee/PJ should check that labor standards compliance is being met:
  - All weekly payrolls and Statements of Compliance have been received, reviewed and any discrepancies resolved; and
  - Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.
- ✓ Although it is not a requirement to retain a portion of the payments, many grantees/PJs have found it helpful in the event of unresolved problems after the final inspection.

## **Final Payment**

- ✓ When construction work has been completed, the contractor will submit a final request for payment. Before making final payment, the grantee/PJ must ensure that:
  - All weekly payrolls and Statements of Compliance have been received and any discrepancies have been resolved;
  - All discrepancies identified through job site interviews have been resolved; and
  - All files are complete.

## **Chapter 5: Restitution for Underpayment of Wages**

### **Restitution for Underpayment of Wages**

- ✓ Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.
- ✓ In many cases, wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due. This approach may not be appropriate to calculate wage restitution for piece rate employees because these employees are not paid per hour.
- ✓ Grantees/PJs must notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments.
- ✓ The employer is required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (e.g., payroll #'s 1 through 6; or a beginning date and ending date). The correction payroll must list:
  - Each employee to whom restitution is due and their work classification;
  - The total number of work hours;
  - 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 to be paid.
- ✓ A signed Statement of Compliance must be attached to the corrected payroll form.
- ✓ The grantee/PJ should review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.
- ✓ Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The grantee/PJ should continue to attempt to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers should be forwarded to HUD, along with a schedule showing the employee(s) name, last known mailing address, full Social Security Number and the amount they were to be paid.

## **Chapter 6: Documentation and Reporting Requirements**

### **Documentation**

- ✓ Grantees/PJs must maintain documentation to demonstrate compliance with the labor standards requirements including, but not limited to:
  - Bid and contract documents with the labor standards clause and wage decision;
  - Payroll forms from the prime contractor and subcontractors, including signed statements of compliance;
  - Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies;
  - Documentation of compliance violations that may have arisen (e.g., payments to workers for underpayments of wages or overtime); and
  - Enforcement reports (see below for more information).
- ✓ The labor standards compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected are not unduly exposed to financial or personal risk.
- ✓ The standard compliance documents must be preserved and retained for a period of three years following the completion of work. Therefore, it is important to follow guidelines outlined in the Labor Relations Letter 2006-02 to minimize risk of improper and/or unnecessary disclosure, including:
  - Keep sensitive materials secret at all times (in locked file cabinet, not left in areas accessible to the public);
  - Do not include Social Security Numbers on documents and records unless it is absolutely necessary. Only include the last 4 digits of the Social Security Number or an identifying number.
  - Do not disclose the identity of any informant ; and
  - Dispose of documents and records containing sensitive information responsibly.

### **Reporting**

- ✓ Grantees/PJs must report to HUD whenever an employer is found to have underpaid its employees by \$1,000 or more. In addition, grantees/PJs must report on all covered contracts awarded and on all enforcement actions taken every six months. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all Davis-Bacon construction activity.
- ✓ The Semi-Annual Report form (HUD-4710) and instructions (HUD-4710i) are available on HUD's web site and HUDClips (<http://www.hud.gov/offices/adm/hudclips/>).

## Attachment 1

### Listing of Davis-Bacon Resources Available Via the Internet

The documents listed below are current as of June 2011. To ensure that you are using the most updated information, please visit the HUDCLIPS website at <http://www.hud.gov/offices/adm/hudclips/> or HUD's Office of Labor Relations website at [www.hud.gov/offices/olr](http://www.hud.gov/offices/olr).

#### **Applicable Statutes**

Davis-Bacon and Related Acts

The Contract Work Hours and Safety Standards Act

The Copeland (Anti-Kickback) Act

Section 110 of the Housing and Community Development Act of 1974, as amended

Section 286 of the National Affordable Housing Act of 1990, as amended

#### **Applicable Regulations**

##### ***Department of Housing and Urban Development Regulations***

Title 24 Code of Federal Regulations 570.489(l): Debarment and suspension  
(*State Community Development Block Grant grantee/PJs*)

Title 24 Code of Federal Regulations 570.603: Labor standards (*Entitlement  
Community Development Block Grant grantee/PJs*)

Title 24 Code of Federal Regulations 570.609: Use of debarred, suspended, or  
ineligible contractors or subrecipients (*Entitlement Community Development  
Block Grant grantee/PJs*)

Title 24 Code of Federal Regulations 92.354: Labor (*HOME program*)

##### ***Department of Labor Regulations***

Title 29 Code of Federal Regulations Part 1: Procedures for Predetermination of  
Wage Rates

Title 29 Code of Federal Regulations Part 3: Contractors and Subcontractors on  
Public Building or Public Work Financed In Whole or In Part by Loans or Grants  
from the United States

Title 29 Code of Federal Regulations Part 5: Labor Standards Provisions  
Applicable to Contracts Covering Federally Financed and Assisted Construction  
(Also, Labor Standards Provisions Applicable to Non-construction Contracts  
Subject to the Contract Work Hours and Safety Standards Act)

Title 29 Code of Federal Regulations Part 6: Rules of Practice for Administrative  
Proceedings Enforcing Labor Standards In Federal and Federally Assisted  
Construction Contracts and Federal Service Contracts

Title 29 Code of Federal Regulations Part 7: Practice Before the Administrative  
Review Board With Regard to Federal and Federally Assisted Construction  
Contracts

## **U.S. Department of Housing and Urban Development Notices**

Labor Relations Letters (Policy)

### **Labor Relations Forms**

Project Wage Rate Sheet: HUD-4720

Record of Employee Interview: HUD-11

Report Of Additional Classification and Rate: HUD 4230A

Semi-Annual Labor Standards Enforcement Report: HUD 4710:-- Local  
Contracting Agencies - Housing and Urban Development Programs)

Federal Labor Standards Questionnaire: HUD- 4730

Federal Labor Standards Complaint Intake Form: HUD-4731

Federal Labor Standards Provisions: HUD-4010:

### **Contract Standards with Federal Labor Provisions; Department of Labor Forms**

Davis-Bacon Poster: WH-1321

Payroll: White House-347

### **Training Materials**

Training Curriculum

PowerPoint Presentation

Discussion Exercises & Questions

## **Related Resources – Websites:**

**HUD: U.S. Department of Housing and Urban Development Office of Labor Relations**  
[www.hud.gov/offices/olr](http://www.hud.gov/offices/olr)

**Federal Wage Determinations On-Line**  
<http://www.wdol.gov>

**GSA: General Services Administration Excluded Parties List System for parties excluded from Federal Procurement and Non-Procurement Programs (Debarred List)**  
<http://epls.gov>

**HUD: Code of Federal Regulations – Title 24**  
<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=201124>

**HUD: Code of Federal Regulations – Title 29**  
<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=201129>

**HUDClips (Forms and Publications)**  
<http://www.hud.gov/offices/adm/hudclips>

**Department of Labor: Wage and Hour Division Forms/Posters**  
<http://www.dol.gov/whd/programs/dbra/forms.htm>

**Department of Labor: Davis-Bacon and Related Acts (DBRA) Compliance/Laws**  
<http://www.dol.gov/compliance/laws/comp-dbra.htm>

**DOL: Wage and Hour Division (WHD) – Davis-Bacon and Related Acts Home Page**  
<http://www.dol.gov/whd/programs/dbra/>

**Field Operations Handbook – General & Statutory Provisions: DBRA & CWHSSA**  
[http://www.dol.gov/whd/FOH/FOH\\_Ch15.pdf](http://www.dol.gov/whd/FOH/FOH_Ch15.pdf)

**WHD – Prevailing Wage Resource Book**  
<http://www.dol.gov/whd/recovery/pwr/toc.htm>

## **Whom to Contact:**

**HUD: Office of Labor Relations Headquarters Staff**  
<http://www.hud.gov/offices/olr/laborrelhq.cfm>

**HUD: Office of Labor Relations Regional/Field Office Staff**  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/labor\\_relations/laborrelstf](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations/laborrelstf)

**HUD: Community Planning and Development Field Office**  
<http://www.hud.gov/offices/cpd/about/staff/fodirectors/index.cfm>