



Special Attention of:

Transmittal for Handbook No: 1344.1 REV-2, Chg-2

Issued: September 2013

1. This Transmits: HUD Handbook 1344.1, Federal Labor Standards Requirements in Housing and Urban Development Programs
2. Summary: Policy added for reconciling transactions and balances for Deposit Account
3. Filing Instructions:

Remove:	Insert:
Chapter 9, pages 9-10 thru 9-16 dated 2/2012	Chapter 9, pages 9-10 thru 916 9/2013



Special Attention of:

Transmittal for Handbook No: 1344.1 REV-2
Chg-1

Issued: March 2013

1. This Transmits: HUD Handbook 1344.1, Federal Labor Standards Requirements in Housing and Urban Development Programs
2. Summary: Changes made to sections of Chapters 5 and 9 of the Federal Labor Standards Requirements in Housing and Urban Development Programs, Handbook 1344.1 Rev 2. Chapter 5 – Labor Standards Administration, Section C 3 – Implementing the final order whereby guidance is provided for taking the appropriate action implementing a final order that affirms, reduces, or waives liquidated assessed damages or when a final assessment has been made without the benefit of a request for reduction or waiver. The changes to Chapter 9-6 – Cross-withholding on projects subject to Davis-Bacon requirements provides guidance on transferring liquidated damages assessed to contractors; changes to 9-16 – Depositing of deposit accounts provides guidance on the completion of follow-up activities to achieve resolution of outstanding issues; and 9-22 – Payee Verification providing that the legitimacy or claims be validated when claims for restitution for deceased or incarcerated workers.
3. Filing Instructions:

Remove:	Insert:
Chapter 5, page 5-21 dated 2/2012	Chapter 5, page 5-21, dated 3/2013
Chapter 9, pages 9-6, 9-10, 9-11, and 9-15 dated 2/2012	Chapter 9, pages 9-6, 9-10, 9-11, and 9-15 dated 3/2013

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Special Attention of:
HUD Regional and Field Labor Relations Staff
HUD Program Participants

Transmittal Handbook No: 1344.1 Rev 2

Issued: February 2012

1. This Transmits: HUD Handbook 1344.1 Rev 2 entitled *Federal Labor Standards Requirements in Housing and Urban Development Programs*.
2. Explanation of Material Transmitted: This Handbook prescribes the policies, procedures and responsibilities of HUD Office of Labor Relations staff and program participants in the administration and enforcement of labor standards provisions related to HUD programs. This issuance contains twelve chapters and associated appendices dealing, primarily, with labor standards matters relating to the Davis-Bacon and Related Acts. The issuance also addresses the procedures and responsibilities of HUD Office of Labor Relations Staff, public housing agencies and Tribally-designated housing entities in the administration and enforcement of labor standards provisions relating to prevailing wage rates determined by HUD pursuant to the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self-Determination Act of 1996 (each as amended).
3. Cancellations: HUD Handbook 1344.1, REV 1, Chg 1 issued December 1986.
4. Significant Changes: Major areas affected by the issuance of this Handbook include:
 - a. Clarifies HUD staff responsibilities and the responsibilities of program participants.
 - b. Updates and enhances Labor Relations policies and procedures concerning day-to-day program administration and enforcement.
 - c. Streamlines labor standards administration and compliance review requirements.
 - d. Provides excerpts and references for Federal labor statutes related to HUD program activity.



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HUD Program Participants

Handbook 1344.1 Rev 2

Issued: **February 2012**

Cross References: DOL Regulations 29
CFR Parts 1, 3, 5, 6, and 7; Labor
Relations Letters; Labor Relations
Guides

Federal Labor Standards Requirements in Housing and Urban Development Programs

PREFACE

The Department of Housing and Urban Development offers this handbook for use by its Office of Labor Relations staff and by program participants such as Community Development Block Grant recipients; public and Indian housing agencies; and other entities operating HUD programs to which labor standards responsibilities have been delegated.

This handbook describes policies and procedures and assigns responsibilities for the administration and enforcement of prevailing wage and reporting requirements in HUD programs. Because the statutory and regulatory labor standards vary among HUD programs, differences in procedures are noted, as applicable.

Unless otherwise noted, all of the forms and other publications referenced in this handbook are available on-line at HUDClips (http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips) and/or the HUD Office of Labor Relations web site (http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations). Documents provided in the appendices to this handbook are so noted.

We hope HUD program participants find this handbook helpful. Contact the HUD Labor Relations staff for your area if you have questions or need further assistance. A list of the staff, their contact information and the jurisdictions they serve are available at the Office of Labor Relations web site (see URL, above).

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Chapter 1 OFFICE OF LABOR RELATIONS

1-1 **Office of Labor Relations.** The Office of Labor Relations (OLR) is responsible for the administration and enforcement of Federal labor standards provisions in HUD programs. These standards include those contained within the Davis-Bacon and Related Acts, the Copeland Act and the Contract Work Hours and Safety Standards Act. Additionally, the Office of Labor Relations is responsible for the administration and enforcement of prevailing maintenance wage requirements of the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self-Determination Act of 1996.

1-2 **Reorganization Plan Number 14 of 1950.** Reorganization Plan #14 (March 13, 1950) was transmitted to Congress by President Harry Truman for the purpose of coordinating the administration of labor standards under various statutes relating to Federal construction and public works or to construction with Federally-financed assistance or guaranties. The Plan authorized and directed the Secretary of Labor to coordinate the administration of legislation relating to wages and hours on Federally financed or assisted projects by prescribing standards, regulations, and procedures to govern the enforcement activities of the various Federal agencies, and by making such investigations as the Secretary of Labor (SOL) deems desirable to assure consistent enforcement.

The authorities granted to the SOL under the Plan concern laws regulating wages and hours of workers employed on Federal (or Federally-assisted) contracts for public works or construction. These laws include the Davis-Bacon and Related Acts, the Copeland Act and the Contract Work Hours and Safety Standards Act.

The Plan reiterated that the actual performance of enforcement activities, normally including the investigation of complaints of violations, remain the duty of the respective agencies awarding the contracts or providing the Federal assistance. The Office of Labor Relations carries out HUD's responsibilities under Reorganization Plan #14. (See also Appendix I-1, *Reorganization Plan #14 of 1950.*)

1-3 **Organization.** The Office of Labor Relations (OLR) is organized in the Office of Departmental Operations and Coordination (ODOC). OLR consists of a Headquarters staff, headed by the Director of Labor Relations, and field staff located in Regional and select field offices. Regional Labor Relations Offices are headed by Regional Labor Relations Officers (RLROs) and Field Labor Relations Offices are staffed by Labor Relations Specialists (LRSs).

1-4 **Roles and responsibilities**

A. **Headquarters Office of Labor Relations (HQLR).** The Headquarters Office of Labor Relations (HQLR) and, specifically, the Director of Labor Relations, serves as the principal advisor to the Secretary of HUD and throughout HUD on matters concerning labor standards administration and

enforcement in HUD programs and associated interests. HQLR is responsible for policy development, guidance, supervision, oversight and provision of technical support to Regional and Field Labor Relations staff.

- B. **Regional Offices of Labor Relations (ROLR).** Regional Offices of Labor Relations are responsible for the proper administration and enforcement of Federal labor standards within the jurisdiction served by the respective Regional Office. The Regional Labor Relations Officer (RLRO) supervises the field Labor Relations staff located within the Region and provides technical support and advice to those staff. The RLRO serves as the principal advisor to the HUD Regional Director and to the Director of Labor Relations concerning labor standards and Labor Relations operational matters and associated interests within the Region. RLROs are also responsible for day-to-day labor standards administration and enforcement for the operational jurisdiction served by the Regional Office.
- C. **Field Offices of Labor Relations (FOLR).** Field Offices of Labor Relations and Labor Relations Specialists assigned to support Field Office program functions are responsible for the proper administration and enforcement of Federal labor standards within the jurisdiction assigned to the staff. The Field Labor Relations Director/Specialist (LRS) serves as the principal advisor to the RLRO and to the Field Office and Field Program Directors concerning labor relations and associated matters within the field jurisdiction.

1-5 **Delegations of Authority.** The Department published delegations of authority in the Federal Register on November 21, 2003. The Department delegated, via the Director of the Office of Departmental Operations and Coordination (ODOC), to the Director of the Office of Labor Relations all the authority of the Secretary of HUD with respect to labor standards administration and enforcement under the Davis-Bacon Act, the Copeland Act, the Contract Work Hours and Safety Standards Act, Reorganization Plan #14 of 1950, the labor standards requirements of various housing related statutes, and the regulations of the Department of Labor. The authority delegated includes the authority to determine or adopt prevailing wage rates, which is vested in the Secretary by certain statutes including the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self-Determination Act, and the Hawaiian Homelands Homeownership Act of 2000.

- A. **Delegations of program authority within the Office of Labor Relations.** The Director of Labor Relations has retained or delegated the following program authorities within the Office of Labor Relations.
 - 1. **Director of Labor Relations (HQLR)** retains program authorities and actions relating to:
 - a. Referrals/requests to DOL on reconsiderations of Davis-Bacon wage decisions, rulings, and additional classifications;

- b. Referrals/requests to DOL on DBRA/CWHSSA investigations on HUD program activity;
- c. Referrals to DOL for hearings/appeals on investigative or other findings of violation, and recommendations for administrative sanctions;
- d. Decisions relating to variations, tolerances, waivers and/or exemptions from the requirements of this handbook and any other directive or policy issued by the HUD Office of Labor Relations. (The Director of Labor Relations may not approve variations, tolerances, waivers and/or exemptions relating to statutory or regulatory requirements.); and
- e. Final decisions relating to the administration and enforcement of prevailing wage rates determined or adopted by HUD.

The Director of Labor Relations has delegated the following program authorities to RLROs and field LRS:

- 2. **Regional Labor Relations Officers** are hereby authorized and empowered to take the following actions within their assigned jurisdiction, and on certain cases or instances assigned to them by the Director of Labor Relations. Actions taken and decisions made by the RLRO may be subject to further review by, or appeal to, the Director of Labor Relations.
 - a. Review/make determinations of Federal labor standards applicability for HUD program activities;
 - b. Refer to HQLR unique and/or complex prevailing wage applicability determinations and other labor standards issues;
 - c. Approve the initiation of Federal labor standards investigations on HUD-assisted projects/contracts;
 - d. Render decisions on requests for reconsideration pertaining to findings of underpayment;
 - e. Recommend, through HQLR, the imposition of administrative sanctions including debarment and limited denials of participation
 - f. Approve reductions or waivers of CWHSSA liquidated damages totaling \$500 or less; recommend, through HQLR, reductions/waivers of CHWSSA liquidated damages totaling in excess of \$500;
 - g. Approve the imposition of deposit requirements on HUD multifamily development projects;
 - h. Approve disbursements from deposit accounts;
 - i. Recommend, through HQLR to DOL, any appeals, variances, tolerances and exemptions in the application of DOL regulations, directives, guidance and/or Davis-Bacon wage decisions;

- j. Refer, through HQLR to DOL, disputes, investigative findings, and other matters relating to Davis-Bacon prevailing wage rates for further review and disposition;
- k. Render decisions on requests for reconsideration pertaining to prevailing wage rates determined or adopted by HUD;
- l. Render decisions on disputes arising from the administration and/or enforcement of prevailing wage rates determined or adopted by HUD; and
- m. Undertake and/or oversee any program actions or authorities delegated to Field Labor Relations Specialists/Staff.

3. **Field Labor Relations Specialists/Staff** are hereby authorized and empowered to take following actions within their assigned jurisdiction and on certain cases or instances assigned to them by the RLRO. Actions taken and decisions made by the field LRS may be subject to further review by, or appeal to, the RLRO.

- a. Review/make determinations of Federal labor standards applicability for HUD program activities;
- b. Refer to the RLRO unique and/or complex prevailing wage applicability determinations and other labor standards issues;
- c. Issue determinations of back wages due and other findings of underpayment or labor standards violation;
- d. Issue notices of intent to assess CWHSSA liquidated damages; approve reductions or waivers of CHWSSA liquidated damages totaling \$100 or less; recommend, through the RLRO, reductions/waivers of CWHSSA liquidated damages totaling in excess of \$100;
- e. Conduct investigations of labor standards compliance as approved by the RLRO;
- f. Issue prevailing wage rates for maintenance laborers and mechanics;
- g. Approve training programs, including wage rates for trainees; associated with maintenance work subject to prevailing wage rates determined or adopted by HUD;
- h. Approve the payment of expenses, reasonable benefits, and/or nominal fees to bona fide volunteers;
- i. Conduct training and provide technical assistance to state and/or local agencies administering HUD programs;
- j. Conduct monitoring reviews to assess state, local and/or tribal agency labor standards performance; and
- k. Issue reports relating to state and/or local agency monitoring.

B. **Responsibilities of state, local and tribal agencies.** This handbook delineates certain labor standards responsibilities of state, local and tribal agencies (collectively referred to as Local Contracting Agencies or LCAs) that administer HUD programs subject to prevailing wage requirements.

Accordingly, LCAs are authorized, empowered and responsible for undertaking the following responsibilities. Actions taken and decisions made by LCAs may be subject to further review by, or appeal to HUD Labor Relations staff.

1. **Designate appropriate staff** prior to any work subject to prevailing wage requirements, to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. Provide the name(s) of the staff to the appropriate HUD Labor Relations staff.
 2. **Establish a construction contract management system** which meets the standards of HUD regulations at 24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.
 3. **Inform, support and oversee any subordinate program participants** (e.g., subrecipients, grantees) concerning labor standards requirements and responsibilities. Ensure full labor standards compliance regarding any activities undertaken by subordinate program participants.
 4. **Ensure that all bid documents, contracts and subcontracts** for work subject to Federal prevailing wage requirements contain the appropriate labor standards provisions and the applicable Federal wage rate decision.
 5. **Ensure that no contract is awarded to a contractor that is ineligible** (e.g., debarred) to participate in Federally-assisted programs.
 6. **Conduct on-site inspections including interviews with laborers and mechanics** employed on the prevailing wage-covered work. Ensure that the applicable Federal wage decision is posted at the job site and, for work subject to Davis-Bacon requirements, ensure that the Davis-Bacon poster (WH-1321) is posted with the applicable wage decision.
 7. **Review certified payroll reports and related documentation.** Identify any discrepancies and/or violations. Ensure that any needed corrections are made promptly.
 8. **Maintain full documentation** of Federal labor standards administration and enforcement activities, such documentation to be made freely available for HUD review. Documentation associated with work subject to Davis-Bacon requirements must also be made freely available to the U.S. Department of Labor (DOL).
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9. **Refer any potential criminal or complex enforcement matters to HUD,** in addition to debarment recommendations and liquidated damage assessments for Contract Work Hours and Safety Standards Act (CWHSSA) overtime violations.
10. **Comply with all HUD requirements** including special statutory, program and/or other requirements.
11. **Prepare and submit to HUD Federal labor standards enforcement reports** as required in DOL regulations at 29 CFR Part 5, §5.7.
12. **State agencies additionally:**
 - a. May communicate directly with DOL concerning its administration and enforcement of Federal labor standards provisions, or may communicate through HUD, at the state's discretion.
 - b. Must monitor **its** grantees' labor standards performance to assess the grantee performance of labor standards responsibilities.
 - c. Must ensure corrective actions are taken for any deficiencies noted in grantee performance reviews.
 - d. Must collect and submit to DOL or to HUD all enforcement reports required in DOL regulations at 29 CFR, Part 5, §5.7. (See also Chapter 10, *Reports – Davis-Bacon and Related Acts*.)

1-6 **Primary labor standards objectives and core work activities.** HUD has identified 5 primary labor standards objectives for itself and for LCAs. In addition, HUD has defined core work activities for its field operations.

A. Labor standards objectives.

1. **Apply prevailing wage requirements properly.** Make certain that prevailing wage and reporting standards are applied where required. Ensure that any exemptions, exceptions or limitations are identified.
2. **Support labor standards compliance.** Provide training, technical support and oversight to program participants, including contractors and subcontractors, to ensure that program participants understand their obligations under Federal labor standards.
3. **Monitor contractor performance.** Conduct reviews of certified payroll submissions and other information to ensure that employers comply with labor standards requirements including the payment of prevailing wages to laborers and mechanics.

4. **Investigate probable violations and complaints.** Thoroughly explore any evidence of violations, especially allegations of underpayment. Ensure full resolution of substantiated violations.
 5. **Pursue debarment and other available sanctions against repeat labor standards violators.** Implement a no-tolerance policy toward employers and any other program participants who repeatedly violate prevailing wage requirements and/or fail to properly carry-out their labor standards responsibilities.
- B. **HUD Labor Relations core work activities.** Labor Relations' key program responsibilities and tasks have been defined for HUD field operations in terms of the item or activity involved, the expected product or outcome, the timing for performance credit, and the source document and associated recordkeeping. These definitions are contained in the document entitled *Labor Relations Core Work Activities* (see Appendix I-3.) LCAs are not required to observe the core work activities but may find these definitions helpful in the implementation of their own labor standards administration and enforcement program.

Related Appendices

- I-1 Reorganization Plan #14 of 1950
- I-2 Delegations of Authority
- I-3 Labor Relations Core Work Activities

Chapter 2 PREVAILING WAGE REQUIREMENTS IN HUD PROGRAMS

- 2-1 **Introduction.** There are three types of prevailing wage requirements operable in HUD programs: (1) Davis-Bacon Act prevailing wages payable to laborers and mechanics employed on covered construction work; (2) HUD-determined prevailing wages payable to laborers and mechanics relating to maintenance work (including non-routine maintenance work) in Public, Indian and Hawaiian housing operations, and architects, technical engineers, draftsmen and technicians employed in Public, Indian, and Hawaiian housing development; and (3) Service Contract Act prevailing wages relating to contracts for maintenance and other services (for direct HUD contracts only). Davis-Bacon Act wage requirements are made applicable to HUD programs by statutory provisions in the Davis-Bacon Act, itself (for direct HUD contracts *only*) but most often in HUD Related Acts. HUD-determined wage rates are made applicable to Public, Indian, and Hawaiian housing activities by the U.S. Housing Act of 1937, as amended, and the Native American Housing Assistance and Self-determination Act of 1996, as amended. Service Contract Act wage requirements are made applicable by statutory provisions within the Service Contract Act, itself (for direct HUD contracts *only*).

The Office of Labor Relations (OLR) is responsible for certain Davis-Bacon prevailing wage activity and for HUD-determined prevailing wage standards. In addition, there are other Federal laws that contain labor requirements associated with prevailing wages such as overtime and weekly payroll certification and submission. This chapter discusses the Federal laws and regulations for which the Office of Labor Relations is responsible.

Note: Davis-Bacon Act (DBA) and Service Contract Act (SCA) activities for direct HUD contracts are managed by the HUD Office of the Chief Procurement Officer.

2-2 **Basic labor and labor-related statutory provisions.**

- A. **Davis-Bacon Act (DBA).** The Davis-Bacon Act (DBA), enacted in 1931, applies to contracts in excess of \$2,000, for construction, alteration and/or repair of public buildings or public works, including painting and decorating, to which the United States or the District of Columbia is a party. The DBA requires that the advertised specifications for such contracts contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics be based upon the wages found to be prevailing by the Secretary of Labor. The DBA includes provisions that:
1. Require the contractor or subcontractor to pay all mechanics and laborers not less often than once a week;
 2. Prohibit deductions or rebates from wages earned by laborers and mechanics;
 3. Require the contractor or subcontractor to pay Davis-Bacon wages to all laborers and mechanics employed on the site of the work regardless

- of any contractual relationship alleged to exist between the laborers and mechanics and the contractor or subcontractor;
4. Require that the scale of wages to be paid (i.e., the applicable Davis-Bacon wage decision) be posted in a prominent and accessible place at the work site;
5. Define prevailing wages to include fringe benefits;
6. Permit withholding from payments due to the contractor on account of wage restitution which may be found due to the laborers and mechanics;
7. Permit the payment of wage restitution from amounts withheld from contract payments;
8. Permit the termination of the contract where it is found that that any laborer or mechanic is underpaid;
9. Permit the debarment of persons or firms found to have disregarded their obligations to employees and subcontractors.

The Davis-Bacon Act is applicable where the Federal Government or the District of Columbia is a party to a contract for construction and the value of the contract exceeds \$2,000. This type of applicability is referred to as *direct Davis-Bacon Act or DBA coverage*. One example is repairs to HUD-owned properties where HUD contracts directly for the repairs. Such DBA contracts are managed under the auspices of HUD's Office of the Chief Procurement Officer. A copy of the DBA is provided in Appendix II-2.

Most HUD- construction work is *not* covered by the DBA since HUD usually does not contract directly for construction work. Rather, Davis-Bacon wage rates apply to HUD programs because of prevailing wage requirements expressed in HUD "Related Acts" such as the U. S. Housing Act of 1937 and the Housing and Community Development Act of 1974, as amended. The *Related Acts* (referred to throughout this Handbook as the Davis-Bacon and Related Acts or *DBRA*) are discussed further in paragraph 2-3 of this chapter.

- B. **Contract Work Hours and Safety Standards Act (CWHSSA).** The CWHSSA applies to both direct Federal contracts and to Federally-assisted contracts where those contracts require or involve the employment of laborers and mechanics and where Federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of PHA/TDHE/IHA developments.

Note: CWHSSA overtime provisions do not apply to laborers and mechanics employed directly by Public or Indian housing agencies.

CWHSSA provides that all overtime (O/T) hours (defined as hours worked in excess of 40 during any workweek on the CWHSSA-covered project site) must be compensated at a rate not less than one and one half times the regular basic rate of pay (i.e., premium pay). Where CWHSSA O/T provisions are applicable, compensatory time in lieu of premium pay for O/T hours is not permissible. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States for liquidated damages computed at the rate of \$10 per violation. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

Exemptions:

1. CWHSSA overtime provisions do not apply where the Federal assistance is only in the nature of a loan guarantee or insurance.
2. CWHSSA overtime provisions do not apply to prime contracts of \$100,000 or less.

C. **Copeland Act (Anti-Kickback Act).** The Copeland Act concerns three facets of prevailing wage compliance:

1. The “anti-kickback” provision makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. Violations of the anti-kickback provision are punishable by a fine or by imprisonment up to 5 years, or both.
2. Associated DOL regulations restrict payroll deductions to those that are permissible without DOL approval as explained at 29 CFR §3.5; deductions that require advance DOL approval are explained at 29 CFR §3.6.
3. The Act also requires the submission of weekly payroll reports and statements of compliance (certified payroll report = CPR) by all contractors and subcontractors engaged in such construction, prosecution, completion or repair. The willful falsification of a payroll report or Statement of Compliance may subject the employer to civil or criminal prosecution under §101 of Title 18 and §3729 of Title 31 of the U.S.C. and may also be a cause for debarment.

Exemptions:

1. Copeland Act CPR requirements are applicable *only* where Davis-Bacon (DBA or DBRA) prevailing wage provisions are applicable.

2. Copeland Act *anti-kickback* provisions do not apply where the Federal assistance is only in the nature of loan guarantee.
- D. **Fair Labor Standards Act (FLSA).** The FLSA governs such matters as Federal minimum wage rates and overtime (O/T). These standards are generally applicable to any labor performed and may be *pre-empted* by other (often more stringent) Federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL.
- E. **Portal-to-Portal Act (PA).** The PA applies to the DBA and prevents the commencement of any court suit for unpaid straight-time (S/T) wages more than two years after performance of the work (three years in case of willful violations), where permissible under the law. *However*, it is the position of DOL that the PA does not apply to *administrative* actions initiated through Administrative Law Judge (ALJ) hearing procedures; thus, the PA does not preclude corrective administrative action after two (or three) years.

The PA *does not* apply to Federally-assisted (DBRA) projects. Instead, the various state statutes of limitations would apply to such projects in private actions where they are judicially determined to be permissible under the law. The Federal six-year statute of limitations would apply in government enforcement actions.

- F. **McNamara-O'Hara Service Contract Act (SCA).** The SCA governs maintenance and other service work and applies when the Federal government (or the District of Columbia) contracts directly for such services and the value of the contract exceeds \$2,500. SCA-coverage in HUD programs is limited because HUD infrequently enters into direct contracts for services in the administration of its programs. By way of an example, however, a contract for maintenance service at a HUD-owned multifamily property would be covered by the SCA. Like DBA contracts, SCA contracts are managed under the auspices of HUD's Office of the Chief Procurement Officer. SCA enforcement authority resides *solely* with DOL.

2-3 **HUD Davis-Bacon Related Acts.** Related Acts are program statutes that contain a provision(s) requiring compliance with the wages found to be prevailing by the Secretary of Labor pursuant to the Davis-Bacon Act. These are commonly referred to as the *Davis-Bacon and Related Acts* or *DBRA*. HUD Related Acts include (but are not limited to):

- A. the National Housing Act;
- B. the U. S. Housing Act of 1937;
- C. the Housing and Community Development Act of 1974;
- D. the National Affordable Housing Act of 1990; and
- E. the Native American Housing Assistance and Self-determination Act of 1996, each as amended.

Many of the labor provisions in HUD Related Acts contain applicability thresholds based upon the number of dwelling units involved. Some thresholds are based upon the amount of HUD assistance or the use of HUD funds or assistance. In addition, most HUD Related Acts contain exemptions from prevailing wage coverage for bona-fide volunteers. It is important for OLR and LCA staff to be familiar with the statutory provisions and how these are interpreted. The labor provisions found in current HUD Related Acts are excerpted for reference in Appendix II-1 to this Handbook along with applicability factors relating to specific HUD Related Acts (Appendix II-6).

- 2-4 **Davis-Bacon applicability by administrative instrument.** Even if a HUD program statute does not itself impose prevailing wage requirements, HUD may decide to impose these requirements through an administrative instrument such as regulations or other directives, or by grant or contract agreements. Examples include coverage of the Capital Grant Program, Assisted Living Conversion Program for Section 202 projects, the Housing Finance Agency Risk-Sharing Demonstration Program, the FHA Housing Finance Agency Risk-Sharing Program, and the Assisted Housing Drug Elimination Program.
- 2-5 **Exemptions/exclusions from prevailing wage coverage.** Some HUD programs are not covered because no prevailing wage language is contained in the statute authorizing the program. Examples include McKinney Act programs (other than Single Room Occupancy moderate rehabilitation) and single family FHA insurance programs where there is no language in the statute imposing prevailing wage requirements. In addition, Indian CDBG is excluded from coverage because HUD has exercised statutory authority to waive prevailing wage requirements. (See also exclusions for bona fide volunteers at 2-8, below.)
- 2-6 **Economic Development Initiative/Special Purpose Grants (EDISP).** EDISP grants are activities authorized in HUD appropriations bills where specific projects are earmarked for funding. Generally, EDISP grants are not covered by prevailing wage requirements because the appropriations bills do not contain language imposing Davis-Bacon provisions. However, if other HUD assistance is utilized in conjunction with an EDISP grant, the project associated with the grant may be subject to Davis-Bacon wage provisions to the extent that such provisions are imposed under the other HUD assistance.
- 2-7 **HUD-determined prevailing wage requirements.** HUD-determined prevailing wage rates are applicable to Public, Indian and Hawaiian housing programs because of provisions in the U.S. Housing Act of 1937, as amended (USHA) and the Native American Housing and Self-Determination Act of 1996, as amended (NAHASDA). The USHA and NAHASDA are also Davis-Bacon Related Acts because both contain provisions requiring the payment of not less than Davis-Bacon prevailing wage rates to all construction laborers and mechanics employed in the development of low-income/affordable housing projects.
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- A. **U.S. Housing Act of 1937 (USHA).** The USHA contains a provision requiring that maintenance laborers and mechanics employed in the operation of low-income housing be paid wages not less than prevailing wage rates determined or adopted by HUD. The USHA also requires the payment of not less than HUD-determined or –adopted wage rates to architects, technical engineers, draftsmen and technicians employed in the development of low-income housing.
- B. **Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).** The NAHASDA contains provisions similar to the USHA requiring the payment of not less than HUD-determined wage rates to maintenance laborers and mechanics employed in the operation of affordable housing, and to architects, technical engineers, draftsmen and technicians employed in the development of affordable housing. NAHASDA prevailing wage provisions are applicable to Indian Housing Block Grants and to Housing Assistance for Native Hawaiians. An amendment to NAHASDA allows for the preemption of Davis-Bacon and/or HUD-determined wage rates by tribally-determined prevailing wage rates for the Indian Housing Block Grant (IHBG) program. [See also *Office of Native American Programs (ONAP) Program Guidance No. 2003-04*, dated 2/5/2003]

2-8 **Volunteers.** The labor standards clauses in most HUD program statutes contain provisions allowing for the use of bona-fide volunteers on projects subject to prevailing wage requirements. The use of volunteers may be permitted by a statutory exemption or by statutory waiver authority. Volunteers are excluded from Davis-Bacon and/or HUD-determined prevailing wage coverage and receive no compensation for their labor. However, volunteers may receive expenses, reasonable benefits or nominal fees. (See also HUD Regulations 24 CFR Part 70.)

- A. **Bona-fide volunteer.** A bona-fide volunteer, for labor standards purposes, is defined as an individual who performs services for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered.
 - 1. Individuals shall be considered volunteers only where their services are offered freely and without pressure and coercion, direct or implied, from an employer.
 - 2. An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers. For example, a person that was employed as a covered laborer or mechanic on a project cannot be a bona-fide volunteer working on the same project.
- B. **Expenses, reasonable benefits, or nominal fees.** Volunteers may receive payments for expenses, reasonable benefits or nominal fees in relation to the

work for which they volunteered without losing “volunteer” status. Payment of expenses, benefits or fees must be approved in advance by the HUD Labor Relations Specialist (LRS) responsible for the jurisdiction involved.

Examples of expenses, reasonable benefits and nominal fees include such items as uniform allowances, reimbursement for cleaning expenses or wear and tear on personal clothing, and out-of-pocket costs for meals and/or transportation. Such payments are not tied to productivity and in no way are construed as wages or other paid compensation. (See also 24 CFR Part 70, §70.3(b).)

1. Entities that propose to pay expenses, reasonable benefits or nominal fees to volunteers shall request a determination from the LRS that the proposed payments meet the regulatory criteria for such payments.
2. The LRS must respond to such requests within 10 HUD-work days following receipt by the LRS of sufficient information to allow for a determination.

C. **Recordkeeping.** Entities receiving the services of volunteers must maintain records relating to any work that is performed on projects or contracts otherwise covered by Federal prevailing wage requirements.

1. For projects that utilize all-volunteer labor, these records must include the name and address of the agency sponsoring the project, a description of the project, the number of volunteers, the hours of work they performed, and where a waiver of prevailing rates is involved, the type of work performed by the volunteers (See 24 CFR, Part 70, §70.5(c)) .
2. For projects that utilize a mix of volunteer and paid workers, these records must include the items above, and the names of the volunteers.

2-9 **Sweat equity.** Sweat equity programs permit members of eligible families to provide labor in exchange for program benefits including acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Sweat equity participants are exempt from Federal prevailing wage requirements. Sweat equity is permitted under HOME (see §255 of the NAHA) and (for homeownership) in Indian and Native Hawaiian housing programs under NAHASDA (see also *ONAP Program Guidance No. 2003-03*, dated 2/4/2003).

2-10 **Department of Labor Regulations.** Reorganization Plan #14 of 1950 (discussed in Chapter 1) authorizes the Secretary of Labor to prescribe standards, regulations and procedures which are observed by Federal agencies, including HUD, in the administration and enforcement of Federal labor standards provisions such as Davis-Bacon wage requirements. These regulations are published at Title 29 in the Code of Regulations (CFR); copies of the relevant DOL regulations are contained in Appendix II-4 and are available on-line at: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

DOL regulations are discussed in more detail throughout this Handbook as related topics are covered. The relevant Parts include:

- A. **Part 1 – Procedures for Predetermination of Wage Rates.** This Part explains how DOL determines the prevailing wage rates under the Davis-Bacon Act. It defines “prevailing wage” and describes how DOL conducts wage surveys and makes determinations of prevailing wages. It discusses when revisions to wage determinations (e.g., supersedeas wage determinations, modifications) become effective with regards to events such as contract awards, starts of construction, bid openings, FHA initial endorsements, and Section 8 agreements to enter into Housing Assistance Payments (HAP) contracts. Part 1 also discusses reconsideration by the Wage and Hour Administrator of wage determinations or of decisions by the Administrator concerning the application of a wage determination.
- B. **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.** This Part requires the submission of weekly certified payroll reports, discusses permissible payroll deductions from wages, and describes acceptable methods of wage payment. It also concerns the anti-kickback provisions of the Copeland Act.
- C. **Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).** This Part concerns the responsibilities of Federal agencies in the administration and enforcement of Davis-Bacon wage requirements, Copeland Act anti-kickback, certified payroll and wage payments requirements, and CWHSSA overtime provisions. Part 5 is likely the most relevant for HUD Labor Relations staff. It contains definitions, provisions that must be included in the contracts for all covered works, standards for contractor/subcontractor compliance, enforcement requirements and remedies, debarment proceedings, liquidated damages provisions for CWHSSA overtime violations, and reporting requirements.
- D. **Part 6 – Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally Assisted Construction Contracts and Federal Service Contracts.** This Part concerns administrative hearings on enforcement of the Davis-Bacon and Related Acts, the Copeland Act, Contract Work Hours and Safety Standards Act, and the Service Contract Act. It primarily involves responsibilities and procedures within the Department of Labor.
- E. **Part 7 – Practice Before the Administrative Review Board with Regard to Federal and Federally Assisted Construction Contracts.** This Part

concerns the rules of practice of the Administrative Review Board (formerly known as the Wage Appeals Board). Again, this Part primarily involves responsibilities and procedures within the Department of Labor.

- 2-11 **Department of HUD program regulations.** HUD programs regulations are published at 24 CFR. HUD regulations are available on-line at: www.access.gpo.gov/nara/cfr/cfr-table-search.html.

Some HUD program regulations contain requirements pertaining to labor standards provisions. HUD regulatory provisions will be discussed throughout this Handbook and its appendices, as appropriate.

- A. **Part 70 – Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates.** This Part governs the use of bona-fide volunteers on projects subject to prevailing wage requirements. It contains definitions and procedures for implementing exemptions and obtaining waivers from HUD concerning prevailing wages for volunteers.
- B. **Part 92 - Home Investment Partnerships Program.** This Part, specifically §92.354, contains the labor standards provisions applicable to the HOME program. It discusses applicability issues and prevailing wage exclusions for volunteers and sweat equity.
- C. **Part 200 – Introduction to FHA Programs.** This Part, at §200.33, contains the labor standards provisions applicable to FHA insurance programs.
- D. **Part 266 – Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans.** This part, at §266.225, contains the labor standards provisions applicable to HFA risk-sharing projects.
- E. **Part 891 – Supportive Housing for the Elderly and Persons with Disabilities.** This Part, at §891.155(d), contains the labor standards provisions applicable to Section 202 and Section 811 projects.
- F. **Part 1000 – Native American Housing Activities.** This Part, at §1000.16, contains the labor standards provisions applicable to Indian housing programs.
- G. **Part 1006 – Native Hawaiian Housing Block Grant Program.** This Part, at §1006.345, contains the labor standards provisions applicable to the Native Hawaiian Housing Block Grant Program.

Related Appendices

- II-1 HUD Davis-Bacon Related Acts (Excerpts)
- II-2 Davis-Bacon Act/Copeland “Anti-kickback” Act
- II-3 Contract Work Hours and Safety Standards Act
- II-4 DOL Davis-Bacon Regulations (29 CFR Parts 1, 3, 5, 6 and 7)

- II-5 Federal Labor Standards Coverage in Major HUD Programs
- II-6 Factors of Labor Standards Applicability

Chapter 3 DAVIS-BACON WAGE DECISIONS

- 3-1 **Introduction.** The U.S. Department of Labor (DOL) is responsible for determining prevailing wage rates for construction work pursuant to the Davis-Bacon Act and publishes schedules of these wages in Davis-Bacon wage decisions. DOL regulations pertaining to the determination, publication, use and effectiveness of Davis-Bacon wage decisions (also known as wage determinations) are found at 29 CFR Part 1. A copy of these regulations is found at Appendix II-4 in this Handbook.

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. LCA requests and reports for DOL review must be submitted through the LRS *except* that state agencies may submit requests and reports directly to DOL.

- 3-2 **Construction wage rate decisions – definition.** The term “wage decision” includes the original decision and any subsequent decisions modifying, superseding, correcting or otherwise changing the provisions of the original decision. (***Note:*** The term “wage decision” shall be used within this chapter to mean the Davis-Bacon wage decision.)

A wage decision is a schedule of construction work classifications and wage rates that represent the *minimum* rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas, usually by county or group of counties, and for four general characters of construction work. (See also, DOL publication *Davis-Bacon Construction Wage Determinations Manual of Operations* and *All Agency Memoranda Nos. 130 and 131*, and *Labor Relations Letter LR-96-03*.)

- 3-3 **Character of work.** The DOL establishes Davis-Bacon wage decisions for four broad categories (or characters) of construction work:

- A. **Residential.** Residential construction is defined as those projects involving the construction, alteration or repair of single family houses or apartment buildings of no more than four (4) stories in height. The definition includes all incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.
- B. **Building.** Building construction includes apartment buildings exceeding four (4) stories, and all other sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including incidental items such as grading, paving and utilities. Examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, and dormitories.

- C. **Highway.** Highway construction includes the initial construction, alteration or repair of roads, streets, highways, alleys, parking areas, sidewalks and other similar projects not incidental* to residential, building or heavy construction.

* For example, the repair of streets and parking areas in a residential area that is performed independent of any other construction work is subject to highway wage rates. However, streets, parking areas and sidewalks installed during the new construction of residential apartments would be considered *incidental* to the residential construction work and would be performed pursuant to the residential wage decision applicable to the project.

- D. **Heavy.** Heavy construction projects are those that are not properly classified as “residential”, “building”, or “highway”. Some examples include antenna towers, canals, drainage and irrigation projects, sanitary and storm sewers, water mains and supply lines (not incidental to other construction), and storage tanks.

3-4 **Types of wage decisions.** In addition to four (4) characters of construction work, wage decisions are issued in two ways: General wage decisions and project wage decisions.

- A. **General wage decisions.** Most Davis-Bacon wage decisions are “General Wage Decisions”, also referred to as “area decisions”. General wage decisions are usually published annually by DOL and may be modified or superseded throughout the year. Updates to wage decisions are typically published on Fridays. The official web site for publications of general wage decisions, modifications and supersedeas wage decisions is: www.wdol.gov (*Wage Determinations On-line*). HUD Labor Relations staff and LCAs may utilize general wage decisions without advance notice or approval from DOL. Most Davis-Bacon wage decisions are available as published general wage decisions.
- B. **Project wage decisions.** If an appropriate wage decision (by location, character of work, and/or specific trade required) is *not* published in the general wage decisions, a “project” wage decision shall be ordered from DOL. Project wage decisions are applicable *only* to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page of the wage decision. Like general wage decisions, project wage decisions may be modified.

Note: A project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved. For example: A project involves only roof replacement on a 4-story apartment building and the only classification needed for the work is

a Roofer. A general wage decision is published for residential construction in the county where the project is located; however, the general wage decision does not include a Roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision must be ordered from DOL.

3-5 **Obtaining wage decisions.** General wage decisions and modifications are available to LRSs and LCAs through www.wdol.gov. This is the *only* on-line location endorsed by DOL. Project wage decisions must be ordered on a case-by-case basis from DOL (see paragraph B, below).

- A. **General wage decisions** are available on-line at www.wdol.gov. Note that this web site carries current wage decisions/modifications and an archive of previous general wage decisions/modifications beginning February 2000.
- B. **As project wage decisions are needed,** the LRS shall submit a completed SF-308, *Request for Determination and Response to Request*, to DOL National Office, allowing approximately 30 days for receipt of the project wage decision from DOL.

3-6 **Selecting the correct wage decision.** Wage decisions are selected and assigned to specific contracts or projects by the responsible contract officer. For HUD-administered projects (e.g., FHA-insured multifamily development), the responsible contract officer is the LRS. In addition, the LRS provides technical support and oversight to LCAs administering HUD programs in selecting and assigning the appropriate wage decision. In general, the appropriate wage decision is the *one* wage decision that is applicable to the geographic location and overall character of work to be performed. (See also *Labor Relations Letter LR-96-03, Application of Department of Labor guidance concerning "projects of a similar character"*.)

- A. **Geographic location.** Wage decisions are issued by county or groups of counties. The appropriate geographic location is generally the county in which the project/construction work will be physically located.
- B. **Character of work.** The overall character of work is determined based upon the principal purpose(s) of the project and the end result of the construction activity. DOL guidance (All Agency Memo 130) states that a "project" is classified as belonging in *one* of the four categories of construction and that a "project" consists of *all construction necessary to complete a facility*. The four categories of construction are discussed in section 3-3 of this guide. "Overall character" considers the principal purposes of the construction in conjunction with any incidental items to identify the *one* category of construction that corresponds best to the project. In certain cases, a single project may contain separate and distinguishable components that fall into different categories of construction and are not incidental.

1. ***Incidental*** items are elements of a project whose function is to support the principal purposes and do not change the overall character of work. Examples of incidental items include parking areas and sidewalks installed to support residential or building projects. While parking areas and sidewalks, in and of themselves, constitute “highway” construction, these elements installed in conjunction with a residential or building project are considered to be incidental to the principal purpose of the construction and are subject to the same wage decision that applies to the principal purpose.
2. ***Substantial*** is defined by DOL in terms of relative cost: more than 20% of the total project cost, and/or in terms of absolute cost: \$1 million or more. A project that contains substantial components that fall into different categories of construction may require that separate wage decisions be assigned to substantial components. (See paragraph 3-6(E), below.)
3. ***End result*** refers to the outcome of the construction activity that determines the character of work. This generally is a factor only in rehabilitation projects. For example, if an existing 4-story office building is being rehabilitated and the end result will be an apartment building, the character of work is *residential*. Conversely, if a single-family home is being renovated and the end result is a community center, the character of work is *building*.

- C. **Considerations for residential construction.** Residential construction is defined as projects involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

The primary component, which determines the character of work, is the housing. Elements such as site work, parking areas, etc., are incidental items and are included within the definition of residential construction. Generally, any housing development (four stories or less) is classified as “residential.” This classification is not altered by the cost of incidental items, even if such costs reach the threshold guides (above) for “substantial.” Except in the most extraordinary circumstances, such as where local industry practice clearly demonstrates otherwise, only residential wage decisions shall be assigned for housing development projects of four stories or less. The Regional Labor Relations Office (RLRO) shall consult with HQLR in advance where the use of multiple wage decisions is contemplated for a housing development project. (See also *Labor Relations Letter LR-96-03*.)

1. **First story (floor).**
 - a. A lowermost story is considered a first story (floor) if it is:

- (1) Primarily above exterior grade on one or more sides; and,
 - (2) Contains at least 50% living accommodations or related nonresidential uses (e.g., laundry space, recreation/hobby rooms, commercial use, and/or corridor space).
- b. A lowermost story is considered a first story (floor) without regard to a percentage test if it is primarily above ground on two or more sides.
- c. A lowermost story is considered a first story (floor) if it contains the main entrance to the building.
- d. A lowermost story is considered a first story (floor) without regard to exterior grade if it is used for apartment space in a way substantially similar to the upper floors.
2. **Basement.** Stories below grade used for storage, parking mechanical systems/equipment, etc., are considered basement stories which are not used in determining the building's height.
3. **Attic.** An attic is an unfinished space located immediately below the roof. Such space is not used in determining a building's height even if used for storage purposes.
4. **Half-story.** A half-story over the building's fourth story would preclude a residential classification. A half-story is a story finished as living accommodations located wholly or partially within the roof frame with floor space at least half as large as the story below. (Space with less than five (5) feet clear headroom shall not be considered as floor area.)
5. **Top story.** The top story, not finished for living accommodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height.
6. **Housing unit requirements.** Each housing unit must be fully and independently functional; each housing unit must have its own kitchen and bathroom. A building wage decision is applicable if the project design fails to meet these criteria. For example, certain assisted living facilities may not meet these criteria.

Note: Single room occupancy (SRO) projects are *exempt* from these criteria. SRO projects are not required to have a kitchen and bath in each housing unit. (*Dutch Hotel (SRO) Kitchen, WAB No. 90-29, March 22, 1991.*)

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- D. Mixed-use projects.** Some projects may contain elements of different construction characters that are separate in function and are not incidental to each other. For example, a 3-story building and a 5-story building in a multifamily project each has an independent purpose and function and is not incidental to the other. In such cases, it is appropriate to identify more than one character of work and to assign multiple wage decisions, i.e., a wage decision(s) covering each character of work involved.
- E. Multiple wage decisions.** “Multiple wage decisions” refers to the practice of assigning more than one Davis-Bacon wage decision for a single project. Multiple wage decisions may be required when the project contains separate and distinguishable components that fall into different categories of construction and the components are *not* incidental to each other (e.g., mixed-use projects) *and/or* are so substantial in cost or scope that separate wage decisions for the components are warranted.
- F. Davis-Bacon compliance on projects with multiple wage decisions.** The developer/prime contractor must ensure that all laborers and mechanics receive no less than the applicable wage rate based upon the classification of work performed and the wage decision assigned to the “character” of the construction work performed. Compliance may be established in the following manners:
1. **Pay the highest of all wage rates.** The developer/prime contractor may establish compliance by ensuring the payment of the highest wage rate on all applicable wage decisions for each work classification. *Or,*
 2. **Utilize wage rates on all wage decisions.** The developer/prime contractor may utilize the wage rates contained in all of the wage decisions assigned provided that the following conditions for multiple wage decisions are met:
 - a. The project/contract specifications must clearly delineate the portions of the project/contract subject to each wage decision assigned.
 - b. All assigned wage decisions must be posted at the job site with an explanation as to where each wage decision applies.
 - c. The developer/prime contractor must establish adequate controls to ensure that all laborers and mechanics are paid in accordance with the wage decisions assigned.
 - d. All employers (prime contractor, subcontractors, lower-tier subcontractors) must prepare and maintain accurate employee time and payroll records to demonstrate compliance with all wage decisions assigned to the project/contract.
 - e. Use of the wage rates contained in multiple wage decisions is contingent upon the agreement and compliance with these conditions.
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- 3-7 **Modifications.** General wage decisions and project wage decisions may be modified from time to time to keep them current, correct errors and for other purposes. Modifications may be limited to one or more particular work classifications and wage rates. Modifications are effective to a project if received by the agency (HUD) or if notice of the modification is published (at www.wdol.gov) prior to the lock-in date. Modifications expire on the date of expiration for the wage decision to which the modification applies. For example, a modification to a project wage decision will expire on the same date as the original project wage decision. A modification to a general wage determination will remain in effect until superseded by a subsequent modification, or the original general wage decision is superseded or cancelled.
- 3-8 **Supersedeas wage decisions.** A supersedeas wage decision completely replaces the original wage decision. The most common supersedeas wage decisions are those published annually to replace the prior year's general wage decisions and frequently involve no changes to the work classifications or wage rates. However, supersedeas wage decisions may involve changes in a large number of job classifications and/or wage rates. Supersedeas wage decisions are effective to projects in the same manner as modifications.
- 3-9 **Letters of inadvertence.** Letters of inadvertence are issued by DOL to correct errors in the written text of a wage decision such as clerical errors made in processing the schedule of wage rates. The corrections issued in a letter of inadvertence shall be included in any bid documents, contract specifications, and/or in any on-going contract retroactively to the start of construction.
- 3-10 **Use and effectiveness of wage decisions.** General and project wage decisions, whichever are applicable, become effective or "lock-in" for a particular contract or project at a specific point, in most cases, not later than the date construction starts. Once a wage decision is "locked-in" for a specific contract or project, subsequent modifications or supersedeas wage decisions are not effective for that contract/project. However, prior to the "lock-in" date, modifications and supersedeas wage decisions shall be considered for effectiveness. Project wage decisions shall be monitored to ensure that the "lock-in" date occurs before the project wage decision expires. The "lock-in" date is also referred to as the "effective date". (See also DOL Regulations, *29 CFR Part 1, §1.6.*)

General and project wage decisions shall be effective (locked-in) on the date the contract is awarded, or the date construction starts, whichever may occur first, except as follows:

- A. **Contracts entered into pursuant to competitive bidding.** General wage decisions shall be locked-in on the date bids are opened *provided* that the contract is awarded within 90 days after bid opening. If the contract is awarded more than 90 days after bid opening, a general wage decision must be updated as of the date of award unless an extension is obtained (see

paragraph D, below). A project wage decision shall be locked-in at contract award. Modifications to a general or project wage decision published at www.wdol.gov or received by HUD prior to the lock-in date shall be effective with respect to the contract/project.

Exception for competitive bid procedures ONLY: A modification to a general or project wage decision published/received less than 10 days before bid opening may be disregarded if it is found that there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. A record of such finding must be made to the contract/project file.

- B. Projects assisted under the National Housing Act (e.g., FHA-insured).** A general wage decision shall be locked-in on the date the mortgage is initially endorsed *provided* that construction starts within 90 days after initial endorsement. If construction starts more than 90 days after initial endorsement, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraphs D and F, below). A project wage decision shall be locked-in at initial endorsement or start of construction, whichever occurs first. Modifications published/received prior to the lock-in date shall be effective with respect to that project.
- C. Projects to receive Section 8 rental payments assistance under the U.S. Housing Act of 1937.** A general wage decision shall be locked-in on the date of the agreement to enter into a housing assistance payments contract (AHAP) or project rental assistance agreement (APRAC) or analogous instrument is executed *provided* that construction starts within 90 days after such execution. If construction starts more than 90 days after execution of the AHAP/APRAC, the general wage decision must be updated as of the construction start date unless an extension is obtained (see paragraph D, below). A project wage decision shall be “locked-in” on the date the AHAP or APRAC, or analogous instrument is executed or the start of construction, whichever occurs first. Modifications published/received prior to the lock-in date shall be effective with respect to that project.
- D. Request for extension for general wage decisions.** In those cases where the 90-day time limitation for contract award (paragraph 3-10(A)) or construction start (paragraphs 3-10(B) or (C)) has been exceeded, HUD may request an extension to the effective date of the prior wage decision from DOL. The request must be supported by a statement of the factual circumstances and a finding that the extension is necessary and proper in the public interest to prevent injustice or undue hardship. Such requests shall be prepared by the LRS and submitted through the RLRO to HQLR. HQLR shall consider the request and, if warranted, shall transmit the request to DOL for the consideration of the Wage and Hour Administrator. (See also DOL Regulations 29 *CFR Part 1*, §1.6(c)(3)(iv).)

- E. **Special instructions concerning expiration of project wage decisions.** A project wage decision is void if it is not locked-in before the expiration date. HUD may request an extension when it appears that a project wage decision may expire after the bid opening date but before contract award. The LRS shall follow the instructions at 3-10(D), above, in submitting such a request. (See also DOL Regulations *29 CFR Part 1, §1.6(a)(1).*)
- F. **Special instructions concerning FHA-insured, Section 202 and Section 811 projects.** When a modification or supersedeas decision is published or received by HUD before initial endorsement or initial closing but *after* the issuance of the firm commitment by HUD *and* less than 90-days has transpired between firm commitment and the prospective initial endorsement/closing date, HUD may request a variance in the application of DOL regulations at 29 CFR Part 1, §1.6 such that the project may proceed with the wage decision as it was published on the date of firm commitment issuance. The LRS shall follow the instructions at 3-10(D), above, in submitting a request for variance. (See also DOL Regulations *29 CFR Part 5, §5.14.*)

- 3-11 **Retroactive wage decisions.** If HUD funding or assistance under a statute requiring the payment of Davis-Bacon wage rates is approved *after* contract award (or start of construction where there is no contract award), the LRS/LCA shall identify and obtain the Davis-Bacon wage decision in effect as of the contract award/construction start date. The applicable wage decision shall be incorporated into the contract specifications *retroactively* to the start of construction. (See also DOL Regulations *29 CFR Part 1, §1.6(g).*)

Exception. The DOL Wage and Hour Administrator may issue a wage decision to be effective on the date of approval of HUD funding or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent an injustice or undue hardship. *And*, provided further that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or start of construction, as appropriate. Such requests shall be prepared and submitted in the same manner, including appropriate supporting statements of fact and reasoning, as described at 3-10(D), above.

- 3-12 **Incorporation of wage decision and labor standards provisions in bid specifications and contracts.** The applicable Davis-Bacon wage decision, including modifications, and the applicable Federal labor standards provisions must be made a part of the bid documents (if any) and/or contract specifications for any construction work subject to Davis-Bacon prevailing wage requirements. (See also DOL Regulations, *29 CFR Part 5, §5.5(a).*)

- A. **Incorporation in contracts and subcontracts.** Every ensuing construction contract, subcontract and any lower-tier subcontracts must include the

applicable Davis-Bacon wage decision and its modifications, and the Federal labor standards provisions. The prime contractor is responsible for ensuring the incorporation of the wage decision and labor standards provisions in all subcontracts.

B. Contract labor standards provisions. HUD has four forms containing Davis-Bacon labor standards provisions applicable to various HUD programs. These are applicable as follows:

1. **HUD-2554, Supplementary Conditions of the Contract for Construction** - HUD-administered projects including FHA-insured multifamily development, Section 202/811 and Section 8 projects.
2. **HUD-4010, Federal Labor Standards Provisions** – CPD programs including CDBG, Section 108, EDI/BEDI, and HOME
3. **HUD-5370, General Conditions of the Contract for Construction** - Public Housing programs (may also be used for Indian housing programs)
4. **HUD-5370-EZ, General Conditions for Small Construction/Development Contracts** - Public Housing programs (may also be used for Indian housing programs)

These forms are available at HUDClips and multiple copies are available through the HUD Customer Service Center.

C. Acceptable methods of incorporation. The applicable wage decision and Federal labor standards provisions may be incorporated into bid specifications and contracts by one or more the following methods. (See also *Labor Relations Letter LR-2006-02.*)

1. **Incorporation by “hard-copy”.** The applicable HUD form and wage decision may be physically bound/attached to the contract (and bid specifications, if applicable) as issued by HUD (HUD forms) or DOL (Davis-Bacon wage decisions).
2. **Incorporation into other documents.** The clauses/text of the applicable HUD form and wage decision may be incorporated into other documents (e.g., into a program participant’s own forms) that are bound/attached to the contract (and bid documents, if applicable) or incorporated by reference (see paragraph 3, below). The program participant is responsible for the accuracy of the content. In all cases, the requirements imposed by the applicable HUD form and wage decision remain in force.

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3. **Incorporation by reference.** The applicable HUD form and wage decision, or other documents containing the HUD form clauses/wage decision, may be incorporated into the contract and any bid specifications by reference. The reference must be specific as to the exact form or clauses that are incorporated, and where the form or clauses may be accessed or obtained (e.g., HUDClips, agency web site). Davis-Bacon wage decisions may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the applicable wage decision. Hard-copies of any referenced form, clauses, and/or Davis-Bacon wage decision must be provided upon request.
- 3-13 **Use of the wrong wage decision/failure to include a wage decision.** The use of the wrong wage decision and/or labor standards provisions in the bid documents/contract specifications, or the failure to include the required wage decision and appropriate labor standards provisions does not relieve the prime contractor from potential liabilities for compliance and enforcement actions related to meeting the obligations of the proper wage decision and labor standards. Any such error must be promptly rectified. (See also DOL Regulations *29 CFR Part 1, 1.6(f).*)
- A. **Correcting the wage decision.** If the wrong wage decision or no wage decision was included in the contract specifications, the contract shall either be terminated and resolicited with the correct wage decision, or the correct wage decision shall be incorporated into the existing contract through supplemental agreement or change order, and the contractor shall be compensated for any increases in wages resulting from such change. The LRS or LCA shall issue the correct wage decision applicable to the contract/project based upon the appropriate “lock-in” date. A corrective wage decision incorporated into an existing contract shall be effective retroactively to the start of construction.
- 3-14 **Project Wage Rate Sheet.** Some general wage decisions cover large areas (e.g., several counties or different characters of construction) and may contain wage rates that do not apply to the contract/project to which the wage decision applies. Such wage decisions can be difficult to decipher and confusing to contractors and subcontractors, and to the laborers and mechanics who would review the wage decision to determine whether they are being paid correctly. For ease of reference for the LRS/ LCA, the prime contractor and any subcontractors, and the laborers and mechanics, the LRS/LCA shall prepare a *Project Wage Rate Sheet* (form HUD-4720) which shall reflect the most commonly used work classifications and wage rates as they are contained in the wage decision applicable to the project. The Project Wage Rate Sheet shall be provided to the prime contractor who shall be informed that the Project Wage Rate Sheet does not in any way replace the wage decision, but is provided as a convenience. In the event of any conflict between the Project Wage Rate Sheet and the wage decision, the wage decision shall prevail.
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- 3-15 **Posting of the wage decision.** A copy of the applicable wage decision and any additional classifications shall be posted by the prime contractor at the site of work in a prominent place accessible to the workers, and protected from “wear and tear” (e.g., wind, rain, vandalism, etc.). A copy of the poster, WH-1321, *Employee Rights under the Davis-Bacon Act*, with the name, address, and telephone number of the LRS/LCA or other responsible contract officer shall also be posted at the job site with the applicable wage decision. A Project Wage Rate Sheet may be posted at the job site with the poster and wage decision so that the construction workers may more readily determine the wage rate(s) to which they are entitled.
- 3-16 **Review for missing work classifications and wage rates.** The LRS/LCA shall review the applicable wage decision to determine whether all work classifications required for the construction work are contained in the classifications and wage rates listed within the applicable wage decision. The prime contractor is also responsible for identifying whether any classifications that are required for the project are included in the wage decision. The LRS/LCA shall notify the prime contractor of any missing work classifications; likewise, the prime contractor shall inform the LRS/LCA of any missing work classifications it may detect during its review. The LRS/LCA shall provide instructions and assistance to the prime contractor concerning requests for additional classifications and wage rates.
- 3-17 **Additional work classifications and wage rates.** Whenever it is found that a work classification required for the contract/project is lacking from the wage decision, the responsible employer(s) (e.g., the prime contractor and/or subcontractors that will employ workers in such classification) shall request an additional work classification and propose a wage rate for such classification. The request shall be made through the LCA/LRS. In every case, the LRS must submit the request to DOL for a final decision. The LRS/LCA shall assist the employer in the preparation of the request, if necessary, and provide guidance as to the policies and procedures involved

Note: Additional work classifications and wage rates may be requested *only* after the wage decision effective (“lock-in”) date. (See DOL Regulations *29 CFR Part 5, §5.5(a)(1)(ii).*)

- A. **Additional work classification and wage rate parameters.** Additional work classifications and wage rates may be approved by the LRS where:
1. The requested work classification is used in the area of the project by the construction industry;
 2. The work that will be performed by the requested work classification is not performed by a work classification that is already contained within the applicable wage decision;
 3. The proposed wage rate for the requested work classification bears a reasonable relationship to the wage rates on the wage decision; and

4. The workers that will be employed in the requested work classification (if it is known who the workers are/will be), or the workers' representatives, agree with the proposed wage rate.

General guide. As a general guide, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. "Trade classifications" are generally all work classifications, excluding Laborers, Truck Drivers, and Power Equipment Operators. Additional classifications proposed for Power Equipment Operators must specify the type(s) of power equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any Power Equipment Operator that appears on the wage decision.

- B. **Making the request.** Although a request for additional work classification and wage rate may be prompted following an LRS/LCA review, the proposal must originate with the prime contractor/employer that will utilize the work classification. The prime contractor/employer must submit the request in writing. A basic request must identify the contract/project involved, the work classification requested and the wage rate, including any bona-fide fringe benefits, proposed. In some cases, it may be necessary for the prime contractor/employer to describe the work that the requested work classification would perform. The prime contractor/employer may use HUD Form 4230-A, *Report of Additional Classification and Rate*, to submit the request.
 - C. **LRS/LCA review of request.** The LRS/LCA shall review the prime contractor's/employer's request to determine whether the request satisfies the approval criteria at 3-17(A). The LRS/LCA shall contact the prime contractor/employer if clarification or additional information is needed to complete the review.
 1. **Requests based upon collective bargaining agreements.** Some employers may submit additional work classification requests based upon work classifications and wage rates contained in collective bargaining (union) agreements. The LRS/LCA shall consider whether the agreement is applicable to the contract/project in terms of the agreement's geographic area, the type of work both in terms of applicability to construction and to the character of work involved (e.g., residential, building, heavy or highway), and whether the agreement is/was in effect at the time the wage decision became effective.
 2. **Approving the request, reporting to DOL.** If the LRS/LCA review finds that the requested work classifications and wage rates meet the
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criteria at 3-17(A), the LRS/LCA shall prepare a *Report of Additional Classification and Rate* (HUD Form 4230-A). The LRS shall submit the report along with a copy of the applicable wage decision to the DOL National Office for final decision.

3. **Disapproving the request, referring for DOL decision.** If the LRS/LCA review finds that the requested work classification and wage rate fails to meet the criteria (3-17(A)), or if the parties do not agree on the proper classification or wage rate for the work described, the LRS/LCA shall prepare a HUD 4230-A and a written report explaining the results of the review and any issues in dispute among the parties, and shall forward these along with a copy of the applicable wage decision to the DOL national office for its decision.
4. **Notification to the prime contractor/employer.** The LRS/LCA shall notify the prime contractor/employer in writing of the results of the HUD review and of the pending DOL action.
5. **DOL decision.** DOL regulations permit 30 days for DOL to respond to the HUD Report of Additional Classification and Rate, or to notify HUD that additional time may be needed. DOL will notify HUD in writing of its decision.
6. **DOL approval.** When DOL approves the requested additional work classification and wage rate, the LRS/LCA shall provide a copy of the approved HUD 4230-A and the DOL notice of approval to the prime contractor/employer with instructions that the additional work classification and wage rate must be posted on the job site with the wage decision.
7. **DOL disapproval.** When DOL disapproves the requested work classification and wage rate, DOL will notify HUD in writing of the reasons why the request cannot be approved. DOL may also indicate what work classifications/wage rates that could be approved for the work involved if a modified request is submitted. The LRS/LCA shall notify the prime contractor/employer of the DOL decision and shall provide a copy of the DOL notice to the prime contractor/employer.
8. **Requests for DOL reconsideration.** HUD, the LCA, the prime contractor/employer, or other interested parties may request reconsideration of the DOL decision on a requested work classification and wage rate.
 - a. Such requests must be made in writing accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information.

- b.** Requests for reconsideration initiated by or made through HUD, must be submitted to DOL through the respective RLRO and HQLR.

3-18 **Reconsideration on wage decisions.** HUD, the prime contractor/employer, or other interested parties may request reconsideration on any wage decision issued by DOL. Such requests are highly extraordinary and shall not be initiated by the LRS or RLRO without advance consultation with HQLR. (See DOL Regulations, *29 CFR, Part 1, §1.8.*)

- A.** **Content of requests.** Such requests must be made in writing accompanied by a full statement of the interested party's views and any supporting wage data or other pertinent information.
 - B.** **Submission requirements.** Requests for reconsideration initiated by or made through HUD, must be submitted to DOL through the respective RLRO and HQLR.

Related Appendices

II-4 DOL Regulations 29 CFR Parts 1 and 5

Chapter 4 DAVIS-BACON COMPLIANCE PRINCIPLES AND REPORTING REQUIREMENTS

- 4-1 **Introduction.** Davis-Bacon compliance principles involve the payment to all construction laborers and mechanics of not less than the prevailing wage rate established in the wage decision for the type (classification) of work and the hours of work they actually perform.
- A. **Responsibilities of employers.** Contractors and subcontractors and any lower-tier subcontractors (employers) are required to pay all laborers and mechanics employed or working on the site of the work unconditionally and not less often than once a week, the full amount of wages and bona fide fringe benefits computed at rates not less than those contained in the wage decision. Employers must prepare, certify and submit weekly payroll reports reflecting all the laborers and mechanics (employees) engaged in construction on the site of the work. Employers may also be required to submit related documentation in order to demonstrate compliance with these standards.
- B. **Responsibility of the principal (prime) contractor.** The principal contractor (also referred to as the *prime* contractor) is responsible for the full compliance of all employers (itself, subcontractors, and any lower-tier subcontractors) with the labor standards provisions applicable to the project. For ease in reference, the term “*prime contractor*” shall mean the principal contractor, the term “*subcontractor*” shall mean all subcontractors and lower-tier subcontractors, and the term “*employer*” shall mean any contractor, subcontractor or lower-tier subcontractor that has engaged the services of laborers or mechanics on the project.
- 4-2 **Definitions and interpretations.**
- A. **Laborers and mechanics.** "Laborers" and "mechanics" are those individuals, whose duties are manual or physical in nature, including workers who are performing the work of a trade (e.g., Electrician). These terms include apprentices, trainees and helpers and, for contracts subject to CWHSSA, watchmen and guards.
1. **Working foremen.** Foremen or supervisors that perform construction work and devote more than 20% of their time as a laborer or mechanic are treated, for labor standards purposes, as "laborers" or "mechanics" for their time spent working as a laborer or mechanic.
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2. **Exclusions.** Persons whose duties are primarily administrative, managerial or clerical are not laborers or mechanics.
- B. Employee.** Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person.
1. **Working subcontractors.** Persons who perform the work of laborers or mechanics and who represent themselves to be owners of businesses, sole proprietors, or self-employed are **not** exempt from prevailing wage requirements. These laborers and mechanics are "employed" and are entitled to the prevailing wage for the type of work they perform and must be reported on CPRs for their craft, hours of work, and wages paid. (See *Labor Relations Letter LR-96-01, Labor Standards Requirements for Self-Employed Laborers and Mechanics*, for further guidance concerning wage and reporting requirements concerning working subcontractors.)
 2. **Administrative allowances.** HUD permits administrative allowances concerning payroll reporting and certification requirements relating to the following (also described in *Labor Relations Letter LR-96-01*):
 - a. Owners of Businesses Working with Their Crew
 - b. Owner/Operators of Power Equipment
 - c. Owner/Operators of Trucks
- C. 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 construction work. Bona fide programs are those that have been registered with DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, Bureau of Apprenticeship and Training (BAT) or with a BAT-recognized State apprenticeship agency (SAC).
1. **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.
 2. **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."
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- D. 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.
- E. Proper classification of work.** Each laborer and mechanic shall be classified in accordance with the work classifications listed on the wage decision and the actual type of work he/she performs, and shall be paid the appropriate wage rate and fringe benefits for the classification regardless of their level of skill.
- F. Split classification.** Laborers and mechanics that perform work in more than one classification may be compensated at the rate specified for each classification *provided* that the employer maintains time records that accurately set forth the time spent in each classification in which the work was performed. If accurate time records are not maintained, the employee shall be compensated at the highest of all wage rates for the classifications in which work was performed.
- G. Wages.** The term "wages" means the basic hourly rate of pay plus any contribution irrevocably made by an employer to a bona fide fringe benefit fund, plan or program.
- H. Fringe benefits.** Fringe benefits may include:
1. Sick, vacation or holiday pay;
 2. Costs to defray expenses of apprenticeship or similar programs;
 3. Medical or hospital care;
 4. Supplemental unemployment benefits;
 5. Life insurance;
 6. Pensions on retirement or death;
 7. Compensation for injuries or illness resulting from occupational activity;
 8. Other bona fide fringe benefits; or
 9. Insurance to provide any of the above.

In addition, fringe benefits may reflect the rate of costs to the employer that 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 employer contributions or payments required by other Federal, State or local law, such as FICA, workers' compensation, or unemployment compensation.

- I. Overtime.** Overtime hours are defined as all hours worked in excess of 40 hours in any workweek. Where governed by Federal labor standards, overtime hours shall be 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.
- J. Deductions.** The employer may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Deductions may include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings accounts, and any other legally permissible deduction authorized by the employee. Deductions may also be made for payments on judgments and other financial obligations legally imposed against the employee.
- K. 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 when work on it has been completed. "Site of work" includes other adjacent or nearby property used by the contractor/subcontractor in the construction of the project (e.g., fabrication sites) provided 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.

4-3 **Discharging prevailing wage obligations.** Davis-Bacon prevailing wage rates generally appear as a basic hourly rate plus fringe benefits, if any.

- A.** "Prevailing wage" is made up of two interchangeable components: the basic hourly wage and fringe benefits. The total of the basic hourly wage and fringe benefits comprises the "prevailing wage" obligation. This obligation may be met by any combination of cash wages and creditable "bona fide" fringe benefits provided by the employer. For example:

The Davis-Bacon wage decision requires:

Basic Hourly Rate	\$10.00
Fringe Benefits	<u>\$ 1.00</u>
Total Prevailing Wage	\$11.00

Employers may comply by paying:

1. \$11.00 in cash wages;
2. \$10.00 plus \$1.00 in bona fide fringe benefits; or
3. Any combination of wages and benefits that totals \$11.00 per hour.

4-4 **Use of apprentices and trainees.** Apprentices and trainees may be compensated at rates less than those prescribed by the wage decision for their craft only in accordance with the following parameters.

- A. **Registration.** The apprentice or trainee shall be individually registered in a bona fide program certified by the BAT or a SAC. (*Note:* See paragraph 4.2(C) concerning probationary apprentices and pre-apprentices.)
- B. **Wage rates.** Each apprentice and trainee shall not be paid less than the specified rate in the registered program for his/her level of progress. If the rate specified is represented as a percentage of the journeyworker rate for that craft, the percentage shall be applied to the corresponding wage rate contained in the applicable wage decision.
- C. **Fringe benefits.** Apprentices and trainees must receive fringe benefits as specified in the approved apprenticeship or trainee program. If the program is silent as to fringe benefits for apprentices/trainees, the apprentices/trainees must receive the full fringe benefit specified on the applicable wage decision for their craft.
- D. **Ratio to journeyworkers.** The maximum number of apprentices or trainees employed on the site of work may not exceed the ratio of apprentices or trainees to journeyworkers permitted to the employer by the BAT/SAC certified program. Apprentices or trainees who are employed at the site in excess of the allowable ratio shall be paid the wage rate contained on the applicable wage decision for the classification of work actually performed. If a contractor has both an apprentice and a trainee program, the trainees must be counted together with the apprentices in determining compliance with the allowable ratio (i.e., the journeymen may not be counted twice).

Compliance with the allowable ratio shall generally be met on a day-to-day basis. However, back wages need not be assessed for minor, temporary, and inadvertent ratio imbalances which are promptly corrected.

- E. **De-certification.** In the event the BAT or SAC withdraws approval of an apprenticeship or trainee program, the employer shall no longer be permitted to utilize apprentices/trainees at less than the predetermined rate for the type of work performed, *unless or until* an acceptable program is reestablished and approved.

4-5 **Payrolls and other reporting requirements.** Payrolls and basic records relating to such payrolls shall be maintained by each employer with respect to his/her own workforce employed on the site of the work. The prime contractor shall maintain such records relative to *all* laborers and mechanics working on the site of the work.

Payrolls and related records shall be maintained during the course of the construction work and preserved by the agency (HUD or LCA), the prime contractor and all employers for at least three years following the completion of the work. Such records shall contain:

- A. The name and a individually identifying 4-digit number for each laborer and mechanic;

Note: Employers must maintain each employee's address and full social security number (SSN) at all times during the construction of the project and for no less than three years following its completion. This information must be made available to the prime contractor, HUD and/or the LCA upon request.

- B. His or her correct work classification(s);
- C. Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits;
- D. Daily and weekly number of hours worked, including any overtime hours;
- E. Gross earnings, deductions made, and actual net wages paid;
- F. Evidence pertaining to any fringe benefit programs; and
- G. Evidence of the approval of any apprenticeship or trainee program, the registration of each apprentice or trainee, and the ratios and wage rates contained in the program.

4-6 **Certified payroll reports.** Weekly certified payroll reports (CPRs) shall be submitted for each week any contract work is performed. Each employer shall prepare and certify such payroll reports to demonstrate compliance with the labor standards requirements.

- A. **CPR format.** CPR information may be submitted in any format provided that the LRS can reasonably interpret the information to monitor employer compliance with the labor standards. Employers are encouraged to utilize DOL Payroll Form WH-347. Employers who choose to use other formats must ensure that all information from the WH-347 is included in their format. The WH-347 form is available on-line at the OLR web site (Labor Relations Forms), at HUDClips, and at:
www.dol.gov/dol/esa/programs/drba/forms.htm
- B. **Submission requirements.** CPRs shall be submitted for each employer beginning with the first week such employer performs work on the site of the work. CPRs shall be submitted promptly following the close of each such pay week.
- C. **CPR preparation.** CPRs that are prepared by hand shall be prepared in ink; CPRs prepared in pencil are not acceptable.

1. **Employer information.** Enter the name and address of the employer involved.
2. **Project information.** Enter the name, number and location of the project involved.
3. **Payroll numbering.** CPRs may be numbered sequentially beginning with "1." (Employers are not *required* to number CPRs. However, HUD encourages this practice as it assists in "managing" payroll submissions.) The CPR must identify the name of the employer, the project for which the CPR is prepared, the week ending date, and the workdays throughout the workweek. The CPR for the last week of work performed on the project by each employer should be clearly marked *Final*.
4. **Dates.** Enter the week ending date, and the day and date for each day.
5. **Employee information.** The first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for Federal labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractors records.

6. **Apprentices or trainees.** The first payroll on which any apprentice or trainee appears shall be accompanied with a copy of that apprentice's or trainee's registration in an approved program. A copy of the approved program pertaining to the wage rates and ratios shall also accompany the first CPR on which the first apprentice or trainee appears.
7. **Work classification.** Enter the appropriate work classification for each employee. *Note:* only the work classifications listed on the

applicable wage decision may be utilized. If the wage decision does not contain a work classification and wage rate that is needed for the project, the employer must request an additional classification and wage rate. (See 3-17, *Additional work classifications and wage rates.*)

8. **Split classifications.** The division of hours worked in different classifications shall be accurately maintained and clearly reported. The employer may list the employee once for each classification, distributing the hours of work accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.
 9. **Hours worked at other job sites.** The CPRs should reflect ONLY hours worked at the covered site of work. If an employee performs work at job sites other than the covered project for which the CPR is prepared, those hours worked at other job sites should *not* be reported on the CPR. In such cases, the employer should list the employee's name, work classification, hours worked, hourly rate of pay and gross earnings for the covered project *over* the gross earnings for *all* projects/work performed (e.g., \$528.00/\$816.00). Deductions and net pay should be reported based upon the employee's total earnings (for all projects) for the week.
- D. **"No Work" payrolls.** Employers are not required to submit CPRs for weeks during which no work was performed on the site of the work, *provided* that the CPRs are numbered sequentially *or* that the employer has provided written notice that its work on the project has been suspended.
- E. **Weekly payroll certification.** Each weekly payroll submitted shall be accompanied by a "*Statement of Compliance*" that bears the original signature of the owner, executive/corporate officer, or a designee authorized by the owner or officer. The signature must be in ink; pencil is not acceptable. Signature stamps, photocopies and facsimiles are not acceptable. The employer may utilize the reverse side of the DOL Payroll Form WH-347 as its Statement of Compliance or another document that contains the same language prescribed on the reverse of the WH-347, which must certify to the following:
1. That the payroll for the payroll period contains the information required to be maintained and that the information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3; and
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage decision incorporated into the contract.

F. Falsification. The falsification of any of the above certifications may subject the employer to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

- 4-7 **Inspection of records and on-site interviews.** Each employer shall make the required records (CPRs and related documents) available for inspection, copying, or transcription by authorized representatives of HUD or DOL. In addition, each employer shall permit authorized representatives to interview employees during working hours on the job site.

Failure by any employer to submit the required records or to make them available, or to permit on-site employee interviews may, after written notice to the contractor, cause a suspension of any further payment, advance, or guarantee of funds. In addition, failure to submit the records on request or to make them available may be grounds for debarment action pursuant to 29 CFR 5.12.

- 4-8 **Requests for payrolls by outside parties.** In order to protect the personal privacy interests of employees, copies of CPRs shall be released to outside parties *only if* the employees' personal identifiers (e.g., name, address, individually identifying number) are first deleted pursuant to Exemption 6 of the Freedom of Information Act (FOIA).

- 4-9 **Safeguarding sensitive information.** HUD and LCA staff must take necessary precautions to safeguard sensitive information that may be collected or generated for labor standards purposes. Such sensitive information and associated documents include, but are not limited to, SSNs; employee addresses; certified payroll reports; complainant statements; on-site interview records (HUD-11); schedules of wages due; interview statements; compliance review notes and enforcement reports. (See also *Labor Relations Letter LR-06-02, Custody, security and disposal of Federal labor standards compliance documents and investigative reports.*)

4-10 **Confidentiality.** The identity of any person providing information concerning the labor standards compliance of any contractor, subcontractor and/or employer shall not be disclosed in any manner to anyone other than authorized Federal officials *unless* written consent is provided in advance by such person. Additionally, any portions of a statement or written document provided by such person that would reveal the identity of the source shall not be disclosed without prior written consent. The disclosure of such statements and documents shall be governed by the provisions of the FOIA and the Privacy Act of 1974.

A. **Privacy Act Release.** The LRS shall make available a Privacy Act Release to each person making a statement or providing documentation that alleges underpayment of wages. A signed Privacy Act Release waives that person's right to confidentiality. Some situations demand that the informant sign a Privacy Act Release in order to proceed with any enforcement action. For example:

1. Where the informant's information conflicts with the employer's information;
2. Where the informant's information impeaches the CPRs or other employer records;
3. Where the informant alleges kick-backs; or
4. Where the only way the LRS can assert a violation is with that person's information.

B. **DOL investigative materials.** From time to time, DOL may furnish investigative material to HUD in the course of its administration and enforcement operations. None of the material, other than computations of back wages and liquidated damages, and the summary of back wages due, may be disclosed in any manner to anyone other than HUD or LCA staff responsible for administering the contract without prior approval from DOL.

Chapter 5 LABOR STANDARDS ADMINISTRATION AND BASIC ENFORCEMENT

5-1 **Introduction.** This chapter addresses the administration and enforcement of the Davis-Bacon and Related Acts labor standards in HUD programs. In this chapter, *DOL* shall mean the Department of Labor, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. All references to LR2000 likewise refer to any successor program/software/system instituted by HUD to manage such activity.

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

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

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

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

1. Confirm the specific labor standards provisions applicable to the project (e.g., Davis-Bacon wage and reporting requirements, CWHSSA).
2. Ensure that the current applicable Davis-Bacon wage decision and contract standards are incorporated into the contract for construction (e.g., contract specifications).
3. Ensure that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in Federal programs.
4. Provide technical support to the prime contractor and subcontractors concerning prevailing wage and reporting requirements.
5. Identify and process requests for additional classifications and wage rates, as needed, for the construction of the project.
6. Perform periodic “spot-check” reviews of certified payroll reports (CPRs) and related submissions, including comparison of on-site

- interview data against CPRs, for compliance with the labor standards.
7. Notify the employer and prime contractor of any labor standards deficiencies and required corrective actions.
 8. Identify potential willful violations through spot-check reviews and/or employee interviews. Follow-up on potential willful violations through employee questionnaires and other techniques to identify cases for investigation.
 9. Receive and screen employee and other complaints or allegations of violation.
 10. Ensure full correction of labor standards deficiencies or violations.
 11. As necessary, refer through the RLRO cases for administrative hearing (29 CFR, Part 5, §5.11) and/or make recommendations for debarment (29 CFR, Part 5, §5.12) and/or CWHSSA liquidated damages assessment (29 CFR, Part 5, §5.8).
 12. Prepare reports on all enforcement activity.
 13. Dispose of deposit/escrow accounts established for labor standards purposes.
 14. Establish and maintain, for not less than 3 years after the completion of construction or final disposition of any compliance issues, whichever occurs last, full documentation of all labor standards administration and enforcement activities.

B. Responsibilities/direction for HUD LRS.

1. Recommend to the Regional Labor Relations Officer (RLRO) cases where investigation appears to be warranted.
2. At the direction of the RLRO, conduct investigations of labor standards violations.
3. As necessary, refer to the RLRO cases for administrative hearing (29 CFR, Part 5, §5.11) and/or make recommendations for debarment (29 CFR, Part 5, §5.12) and/or CWHSSA liquidated damages assessment (29 CFR, Part 5, §5.8).
4. As necessary, recommend to the RLRO the imposition of deposit requirements for outstanding labor standards violations and/or CWHSSA liquidated damages liabilities at final closing.

C. Responsibilities/direction for LCAs.

1. Refer to the LRS, after consultation, cases where investigation appears to be warranted. LCAs may also confer and refer directly to DOL.
2. As necessary, refer to the LRS cases for administrative hearing (29 CFR, Part 5, §5.11) and/or make recommendations for debarment

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

3. As necessary, impose escrow requirements for outstanding labor standards violations and/or CWHSSA liquidated damages liabilities, as appropriate during the course of the project/contract.

Section I – Project Administration

5-3 **Contract wage decision and standards.** Each contract subject to Davis-Bacon prevailing wage and associated requirements must contain the applicable Davis-Bacon wage decision and the appropriate contract provisions containing the labor standards clauses. These are often inserted in the contract specifications. The wage decision lists the work classifications approved for the project and the minimum wage rates that must be paid to laborers and mechanics performing the work of the corresponding classifications. The contract clauses prescribe the responsibilities of the contractor and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable HUD or an LCA to enforce the Federal labor standards applicable to the project/contract. (See paragraph 3-12(B) for references to HUD forms containing labor standards provisions for key HUD programs.)

A. **LRS responsibilities - initial closing clearance.** The LRS shall provide initial closing clearance advice for each project. Initial closing clearance considers whether the current, applicable Davis-Bacon wage decision and appropriate contract standards (typically, for multifamily development projects, form HUD-92554M) are incorporated into the contract for construction. The LRS shall inspect the contract specifications or contact the responsible Office of Housing to establish whether the correct wage decision and contract standards are part of the contract. The LRS shall provide written clearance advice to the Offices of Housing and Counsel confirming that:

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

B. **LCA responsibilities.** The LCA is responsible for ensuring that the bid solicitation, if any, and the resulting contract for each project subject to Davis-Bacon wage requirements contain the applicable wage decision and appropriate labor standards provisions. HUD does not prescribe specific actions for LCAs to achieve these results, only that the LCA successfully carry out its responsibilities.

5-4 **Verification of contractor eligibility and termination of ineligible contractors.** No contract may be awarded to any contractor that is debarred, suspended or

otherwise ineligible to participate in Federal or Federally-assisted contracts or programs. The labor standards clauses (e.g., forms HUD-4010; HUD-52531B; HUD-5370; HUD-5370-EZ; HUD-92554M6) inserted in the contract include a certification of eligibility such that the holder of the contract, the prime contractor and all subcontractors, certify that they are eligible for award. The LRS/LCA shall verify the eligibility of all prime contractors prior to initial closing or contract award by reviewing the Excluded Parties List available on-line at: www.sam.gov. The LRS/LCA shall make a record of the verification in the project files. Any contract awarded to a prime contractor or subcontractor that is found to be ineligible for award must be terminated immediately.

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

5-6 **Labor standards administration and enforcement files.** The LRS/LCA is responsible for the creation, maintenance and preservation of labor standards files for each prevailing wage project administered by them. The files shall be kept up-to-date, maintained in a consistent manner throughout construction, and preserved for at least three (3) years following final closing or the final disposition of any compliance issues, whichever occurs last. At all times, the files must be safeguarded to prevent unwanted disclosure of sensitive information. The LRS/LCA shall establish a system of labor standards files for each covered project.

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

1. **Project lead file.** The project lead file shall contain the applicable Davis-Bacon wage decision; the Project Wage Rate Sheet (if prepared); any additional classifications and wage rates processed; and primary project information including, for example, a copy of the application for HUD program assistance (form HUD-92013 or equivalent); the initial closing clearance; prime contractor eligibility verification; confirmation of initial closing; start of construction date; 100% completion notice; final closing clearance; and confirmation of final closing date.
2. **Deposit/disbursement file.** A second lead file is necessary where a deposit account is established at final closing. This file shall contain the deposit agreement; deposit schedule; confirmation of

deposit; copies of determinations and schedules of back wages due; copies of vouchers for refund or payment; and confirmations of payment.

3. Other project files. Other project files are established at the direction of the RLRO or the discretion of the LRS. Such files may include a separate file for each employer submitting CPRs and correspondence files.

B. LCA file system requirements. HUD does not prescribe for LCAs any particular file system or components. *Except* that the file system demonstrates that the LCA has successfully carried out its labor standards responsibilities. LCAs may find LRS file system requirements (above) helpful in establishing a satisfactory file system. At a minimum, these files/documentation must evidence that the LCA:

1. Met the general requirements at paragraph 5-6(A).
2. Properly applied Federal prevailing wage requirements.
3. Ensured that the applicable Federal wage decision and labor standards provisions were incorporated into the contract bid documents, if applicable.
4. Verified the eligibility of the prime contractor prior to award.
5. Ensured that the wage decision in effect at the relevant lock-in date was inserted in the contract and applied to the contract work.
6. Conducted CPR spot-checks, on-site employee interviews, and other actions, as needed, to assess the labor standards performance of the prime contractor and any subcontractors.
7. Detected labor standards discrepancies and other violations and took actions, as needed, to ensure that all such discrepancies/violations were addressed and resolved.
8. Properly managed any labor standards escrow accounts established for the project.
9. Submitted to HUD any labor standards reports required relative to the project/contract.

5-7 **Final closing/close-out review.** The LRS/LCA shall conduct final closing/close-out review for each project. Final closing/closeout review considers whether there are any labor standards issues that cannot or will not be resolved prior to final closing/closeout and, if so, whether a deposit or escrow requirement must be imposed in order for final closing/close-out to proceed. The LRS/LCA shall review the project files and compliance review records to determine the status of any noted discrepancies or enforcement actions and whether any further actions are needed.

A. **LRS final closing clearance.** The LRS shall take actions as needed to provide written clearance advice to the Offices of Housing and Counsel confirming that:

1. There are no outstanding issues and the project may proceed to final closing without condition; or
2. Outstanding issues remain and the closing may proceed conditioned on the deposit to the U.S. Treasury of funds sufficient to meet any wage restitution and/or CWHSSA liquidated damages that have been or may be found due.

Note: Deposit requirements must be approved in advance by the RLRO.

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

5. When a deposit requirement is approved by the RLRO, the LRS shall enter the deposit requirement in LR2000 generating a deposit ticket number, and prepare a *Deposit Agreement* (form HUD-4732), deposit schedule and deposit ticket (*Wire Transfer Instructions for Labor Standards Deposit Accounts*, form HUD-4733). The LRS shall provide these documents with the conditional final closing advice to the Offices of Housing and Counsel. (See also Chapter 9, *Deposits and Escrow Accounts*.) (**Note:** Only deposit ticket numbers generated in LR2000 may be used.)
 6. The LRS shall record the final closing clearance in LR2000.
- B. LCA final review requirements.** HUD imposes no particular protocols concerning a final review. LCAs must ensure that all labor standards issues have been fully resolved or that appropriate provisions (e.g., escrow account) have been or will be put in place to ensure full compliance.

Section II – Basic Enforcement.

- 5-8 **Labor standards compliance monitoring.** Periodic monitoring of project CPRs and related documents is performed to ensure employer compliance with the applicable labor standards provisions. Monitoring is primarily focused on identifying willful violations, for example, those involving falsification of CPRs and/or related records. Periodic monitoring can also identify other discrepancies such as work classifications with wage rates that do not appear on the wage decision. The two key aspects of periodic monitoring include spot-check reviews of project CPRs and on-site interviews with laborers and mechanics employed on the project. Conversely, CPR reviews may disclose unsatisfactory patterns that warrant closer inspection such as targeted on-site interviews (see 5-8(B) and 5-8(C)(6), below).
- A. **CPR spot-check reviews.** The LRS/LCA shall monitor the labor standards performance of each prime contractor and subcontractors (employers), including timely CPR submission and reporting requirements. CPR reviews shall consist of random spot-checks for CPR completion and certification, obvious underpayments, unapproved work classifications, and indicators of falsification. The first CPR spot-check review for each project may provide a pattern of satisfactory labor standards performance on the part of an employer or employers, in which case subsequent reviews may be less frequent and/or less intensive.
- B. **Willful violations/payroll falsification.** Detecting willful violations/payroll falsification is a key element of a successful enforcement strategy. Falsification suggests an employer that knows what is required to meet prevailing wage requirements; knows that it is not meeting the requirements; and is falsifying payrolls to conceal the violations. Employers rarely resort to falsification to hide small wage underpayments; falsification is more typically an attempt to camouflage egregious violations. HUD has developed a list of warning signs to assist compliance monitors in identifying probable willful violations and payroll falsification. These are described in Appendix III-I, *Willful Violations/Falsification Indicators*. In most cases, employee statements, such as those obtained through on-site interviews and questionnaires, are necessary to properly address violations concealed by falsification.
- C. **On-site interviews.** Project inspectors/interviewers (collectively “inspectors”), whether HUD/LCA employees or fee/contract inspectors, are responsible for conducting on-site interviews with laborers and mechanics and recording the information gathered on form HUD-11, *Record of Employee Interview*. HUD Labor Relations Staff shall provide training and technical assistance, as needed, to project inspectors concerning the conduct of such interviews. (*LCAs are encouraged, but not required, to provide*
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inspector training.) Inspectors are encouraged to utilize judgment in assessing whether and with whom on-site interviews should be conducted during any site visit.

1. **Confidentiality.** Each employee interviewed shall be informed that the information given during the interview is confidential, and that his/her identity will only be disclosed with the prior written consent of the employee. (See also 4-10, *Confidentiality.*)
2. **Place and timing of interview.** In accordance with DOL Regulations at 29 CFR 5.5(a)(3)(iii) (and relevant HUD contract provisions), all employees working on the site of the project shall be made available during working hours for interview by authorized representatives of HUD, the LCA and DOL. The interview shall be conducted on the premises at a place that shall permit privacy for the employee; and of duration that causes the least amount of disruption to the on-going work.
3. **Completeness of information gathered.** The inspector shall ensure that all of the information requested on the HUD-11 interview form is complete and accurately reflects the project identification, date of interview and employee statements.
4. **Observations and comments of the interviewer.** The on-site observations of the inspector are particularly important, especially where underpayments are indicated. The inspector shall make careful note of his/her observations on the job site, particularly with respect to the duties actually performed by the employee and any tools used. In addition, the inspector's comments shall indicate whether the employee's statements and the inspector's observations are consistent. Any discrepancies shall be noted by the interviewer on the HUD-11 in the spaces provided. The interviewer shall sign and date the HUD-11 at the completion of the interview.
5. **HUD-11 comparison to CPRs.** Completed HUD-11s shall be promptly forwarded to the LRS/LCA. The HUD-11s shall be compared to the corresponding CPR during regular project CPR reviews. The result of the comparison, including any discrepancies, shall be noted in the space provided for the payroll examiner's comments. The payroll examiner shall sign and date each HUD-11 at the completion of such comparison.
6. **Targeted interviews.** Where spot-check reviews and/or the comparison of HUD-11s to CPRs indicate that underpayments may exist, it is appropriate to target interviews to particular laborers or

mechanics or to the employees of a certain employer(s). In such cases, the LRS shall prepare a memorandum to the appropriate HUD official describing the suspected violations and requesting targeted interviews appropriate to the violations indicated.

Note: LCAs are expected to target on-site interviews as circumstances warrant and to take actions, as needed, to accomplish this result.

- D. **Questionnaires.** Questionnaires are mailed to employees when the LRS/LCA has reason to doubt the accuracy of the payrolls and underpayments are suspected. These questionnaires are used to test the accuracy of the payrolls and/or to obtain the employees' versions of their working conditions. The information gathered through the use of questionnaires may be used to develop complaints of underpayment. (See *Federal Labor Standards Questionnaire*, form HUD-4730.)

5-9 **Compliance principles and common CPR problems and corrections.** The following paragraphs describe compliance principles and common problems that may surface during spot-check reviews, and the appropriate corrective measures. Regardless of the issues or problems involved, *in no case* shall a submitted CPR be returned to the employer. In addition, all correction CPRs must be certified (i.e., accompanied by a properly executed Statement of Compliance).

- A. **Payroll submissions.** DOL regulations require that all employers submit CPRs promptly, generally within one week after the close of the payroll period. The non-submission of CPRs by any employer actively engaged on the project is a serious violation, and shall be addressed promptly.

Non-submission corrections. The LRS shall promptly contact the prime contractor and the appropriate HUD office whenever CPRs have not been submitted. Further advances or payments on the prime contract may be reduced or suspended, after 30-days written notice, if CPRs are not submitted.

Note: LCAs shall promptly inform the prime contractor and take action necessary to alert appropriate personnel so that contract payments may be reduced or suspended, as needed.

- B. **Payroll format.** Employers are encouraged to use Payroll Form WH-347 which accounts for all required information and includes the "Statement of Compliance" certification on its reverse side. Employers may utilize any other payroll form, provided that it contains all of the required information and is accompanied by the Statement of Compliance (reverse side of Form

WH-347) or a statement containing wording identical to that on the reverse of the WH-347. (See also 4-6, *Certified payroll reports*.)

Unacceptable payroll format corrections. Employers who fail to use an acceptable payroll format or Statement of Compliance shall be required to resubmit the payroll/Statement of Compliance for each such week in an acceptable form.

- C. **Employee identification numbers.** The first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Missing identification number corrections. Employers shall be required to submit a correction CPR reflecting any missing identification numbers.

- D. **Payroll completion.** CPRs shall be examined to determine if they include all of the required payroll information.

Incomplete CPR Corrections. If information pertaining to wages earned or paid (e.g., work classification, hours, rate of pay, gross earnings, deductions, net pay) is missing, the contractor shall be required to submit a correction CPR.

- E. **Work classifications.** The work classifications reported on the CPRs shall be compared against the wage decision to ascertain whether the classifications are contained therein.

Unapproved work classification corrections. Employers who report work classifications that are not contained in the wage decision shall be required to classify employees in accordance with the wage decision (e.g., reclassifying "Journeymen" to the proper trade classification, or reclassifying "Tapers" as "Painters"). Otherwise, the employer may request an additional classification and wage rate.

- F. **Wage rates paid.** The wage rates reported on the CPRs shall be compared against the wage decision to ascertain whether the wage rates paid are at least equal to the prevailing wage rates required.

Underpayment of wages corrections. Employers who report wage rates paid at less than the prevailing rates shall be required to make wage restitution to the affected employees. (See 5-11, *Restitution Process*.)

- G. **Apprentice and trainees.** The first CPR on which an apprentice or trainee appears shall be accompanied by a copy of that apprentice/trainee's individual registration in a bona fide apprenticeship or trainee program. In addition, the employer shall provide documentation relating to the allowable ratio of apprentices or trainees to journeyworkers and the apprentice or trainee wage schedule permitted in the approved training program. The ratio of apprentices or trainees to journeyworkers on the job site may not exceed the ratio permitted to the employer in the approved program. Compliance with the ratio shall be reviewed on a daily basis. In addition, each apprentice or trainee shall be compensated in accordance with the wage schedule in the approved program based upon their level of progress.

Apprentice/trainee problem corrections. Employers that fail to provide copies of apprentice/trainee registrations, or documentation pertaining to approved ratios and wage rates shall be required to submit such documentation with their next payroll submission. Unregistered apprentices or trainees and any apprentice or trainee employed on the job site in excess of the allowable ratio shall be entitled to the wage rate on the wage decision for the classification of work *actually performed* and shall be paid restitution accordingly. (See 5-10(B), *Computing restitution for apprentices or trainees.*)

- H. **Overtime compensation.** For projects subject to CWHSSA overtime provisions, all hours worked on the covered project over 40 hours in a workweek must be compensated at no less than one and one-half times the basic rate of pay plus the straight-time rate of any required fringe benefits. Only hours worked on the *CWHSSA-covered project(s)* are considered when calculating overtime. Any hours worked at other locations are not considered for CWHSSA purposes. However, overtime hours worked on other (non-CWHSSA) projects may be subject to Fair Labor Standards Act (FLSA) overtime requirements.

Under-compensated overtime corrections. Employers that fail to properly compensate CWHSSA overtime hours worked shall be required to make wage restitution to the affected employees. The employer may also be assessed liquidated damages for each CWHSSA overtime violation. (See 5-10(C) and (D), *Computing CWHSSA Overtime Restitution, and Calculating CWHSSA Liquidated Damages.*) For other, non-CWHSSA covered projects, the LRS shall refer to DOL any potential FLSA overtime violations.

- I. **Payroll computations.** Payroll computations (hours worked times rate of pay) and extensions (deductions, net pay) shall be spot checked to determine whether the computations are correct.

Incorrect payroll computation corrections. Errors shall be brought to the employer's attention with instructions to exercise greater care. Restitution shall be required and reported on a correction CPR where underpayments result from such errors.

- J. Payroll deductions.** Deductions shall be reviewed for any impermissible, unauthorized, or otherwise unusual activity. Deductions may only be made in accordance with DOL Regulations at 29 CFR Part 3.

Impermissible deduction corrections. Employers that report unauthorized deductions shall be required to submit documentation demonstrating the affected employee's consent. Wage restitution shall be made for any unauthorized or impermissible deductions. Questions concerning the permissibility of deductions shall be referred through the Labor Relations' hierarchy [i.e., LRS, RLRO, Headquarters Labor Relations (HQLR)]. RLROs may also consult with counterpart DOL Regional Wage Specialists for additional guidance.

- K. Payroll certification/signature.** Each CPR Statement of Compliance shall bear an *original* signature, in ink or other permanent marker, of the owner, corporate officer or a designee authorized in writing by the owner or a corporate officer.

Missing/unauthorized signature corrections. Where any CPR is not signed by the owner/corporate officer/authorized designee, or does not bear an original signature, the employer shall be required to submit a corrected Statement of Compliance bearing a proper original signature and/or a written authorization for a designee.

- L. Comparison of HUD-11 on-site interviews to CPRs.** The information recorded on HUD-11 interview forms should agree with information on the corresponding CPR. The LRS/LCA shall compare such information, note the results of the comparison, and sign and date the interview form.

Discrepancies between HUD-11 and CPR corrections. Where discrepancies are noted, the LRS/LCA shall note them on the interview form. All such discrepancies shall be brought to the attention of the employer who shall be required to submit a correction CPR to resolve the differences. Only the name of the employee interviewed, the date of the interview, and the interviewer's observations may be released to the employer. Any statements of the employee cannot be disclosed without his/her prior written consent.

Note: The employee's name, date of the interview, and duties observed can be released because every employee must be made available for interview on the job site. This limited disclosure is a function of the interviewer's observation rather than a disclosure of the employee's statements.

5-10 **Restitution concepts.** When underpayments of wages have occurred, the employer shall be required to make restitution to the affected workers. Restitution shall be made promptly and in the full amounts due, less permissible and authorized deductions, and shall be documented on a correction CPR.

A. Computing Davis-Bacon restitution for laborers and mechanics.

Prevailing wages earned are based upon the wage rate for the classification of work actually performed, multiplied by the total number of covered hours worked.

Wage restitution may be computed as follows:

1. Total hours worked times (x) adjustment rate (DB rate – rate paid) = wage restitution due; or
2. Total wages earned minus total wages paid = wage restitution due

B. Computing Davis-Bacon restitution for apprentices or trainees. Wage restitution for apprentices or trainees who have been employed on the project in excess of the allowable ratio, or for unregistered apprentices or trainees, shall be computed based upon the wage rate(s) contained in the applicable wage decision for the type of work actually performed.

If a contractor or subcontractor employs apprentices or trainees in such a number that the permissible ratio is exceeded, all apprentices/trainees employed in excess of the ratio are considered to have been improperly employed and will be entitled to the wage rate for the classification of work actually performed. For example, if an employer is permitted to employ three apprentices under the approved plan and it is disclosed that he/she is employing five apprentices on the project, the first three apprentices employed on the project shall be considered within the quota; the last two apprentices shall be considered improperly employed and are entitled to wage restitution. As a practical matter, if it is impossible to determine which apprentices were first employed on the project for the purposes of back wage computation, any equitable formula will be acceptable. For example, in the preceding situation, it would be permissible and equitable to rotate three of the five apprentices and compute back wages for the remaining two apprentices in a manner that distributes the back wages as equally as possible.

C. Computing CWHSSA overtime restitution. Overtime (O/T) wages are based upon one and one-half times the basic hourly rate of pay, plus the straight-time rate of any required fringe benefits, multiplied by the number of overtime hours worked. The premium pay (1/2 time pay) is not applied to fringe benefits.

- D. Calculating CWHSSA liquidated damages.** Liquidated damages are calculated with respect to each employee at the rate of \$10 for each day on which the employee was required or permitted to work in excess of the standard (40 hour) workweek without payment of the premium O/T pay required by the Act. *Note* that liquidated damages are also calculated in situations where an employee is paid O/T at an incorrect rate of premium pay.

For example, if an employee worked six 11-hour days in a single workweek and was not paid the O/T rate, \$30 in liquidated damages would be computed -- \$10 for each of the three calendar days on which hours over 40 were worked and not paid at the O/T rate.

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

Note: In the course of basic enforcement and corrections, the employer need only submit a correction CPR to evidence wage restitution paid. Other documentation such as copies of checks; copies of cancelled checks; receipts signed by the employees; employee signatures on the correction CPR; etc., is not required.

- F. Review of correction CPR.** The LRS/LCA shall compute the amounts of restitution due and compare his/her computations to the correction CPR to ensure that full restitution was made. The employer shall be notified of any discrepancies, and shall be required to make additional payments, if needed, evidenced on a correction CPR, within 30 days.

- G. Stipulation to future compliance.** Where the nature and/or scope of the violations are deemed substantial or serious, where the violating employer has been uncooperative, or where continued compliance is in question, the LRS/LCA may request that the employer provide a stipulation to future compliance. This is particularly important where a recurrence of labor standards violations is probable. The LRS may consult with the RLRO as to whether a stipulation is appropriate. The refusal of an employer to provide a stipulation when requested by LRS/LCA shall be deemed serious and may be cause for HUD to refer the matter to DOL for further consideration. (LCAs shall make any such referrals through HUD.)
- H. Withholding from payments due the contractor.** If wage violations are not corrected within 30 days after notification to the prime contractor, the LRS/LCA may cause a withholding from payments due to the contractor of an amount necessary to ensure the full payment of restitution and, if applicable, to cover liquidated damages computed for CWHSSA overtime violations. Only the amounts necessary to meet the potential back wage and CWHSSA liquidated damages liabilities shall be withheld.
- I. Unfound/unpaid workers.** The amount of wages due to any employee who is entitled to wage restitution and is not paid for any reason shall be placed in a deposit or labor standards escrow account as a condition for final closing/close-out.

5-11 **Restitution process.** When it is believed that underpayments have occurred, the LRS/LCA shall notify the employer of the apparent underpayments and request an explanation and/or correction. At each step and level of review, efforts should be made to resolve any dispute(s) and to correct the underpayments and any other violations or discrepancies.

Note: Except in the most extraordinary circumstances, it is always preferable that the employer pay any restitution found due directly to the affected employee(s).

- A. Initial notice to the employer.** Depending on the severity of the potential violations/underpayments, the LRS/LCA may contact the employer informally (e.g., by telephone or email) to secure resolution of the noted discrepancies.
1. If the employer's response/explanation is satisfactory, the LRS/LCA shall make appropriate notes to the file (the LRS shall record such notes in LR2000).

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

Generally, a stipulation to future compliance is not warranted when violations are minor and/or where the employer is cooperative and corrects the violations promptly.

- B. Determination of back wages due.** If the employer's response/explanation does not negate the back wage findings and the employer refuses to pay back wages, the LRS/LCA shall compute back wages and CWHSSA liquidated damages, as applicable, and shall transmit a written determination of back wages found due and right to appeal to the employer by receipted mail (e.g., certified mail or other service requiring acknowledgement of receipt). Determinations shall include:

1. Summary of findings
2. Schedule of back wages found due
3. Notice of obligation to correct the underpayments and of the employer's right to dispute (appeal) the findings within 30 days (see 7-4, *Notice of right to appeal*).

A copy of the determination shall be sent to the prime contractor with notice of its responsibility to ensure correction of the employer's violations. (The LRS shall send a copy of both the determination and the notice to the prime contractor to the RLRO.)

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

Note: LRS/LCA staff *do not* have the authority to enter into negotiations with the prime contractor, employer or any other entity concerning wage restitution liabilities, e.g., 75% of the total amount due; 50 cents on the dollar. However, reconstruction of the labor and wage payment history may involve estimations based on the best judgment of all available information. These estimations may be adjusted because of additional information received, e.g., the percent of hours worked in one classification versus another. LRS/LCA staff must be careful to stay within the boundaries of adjustment based on information available and to not engage in negotiated settlements.

1. If agreement can be reached, the LRS/LCA shall direct the employer and/or prime contractor to pay and document wage restitution on a correction CPR within 30 days.
2. When the correction CPR is received, the LRS/LCA shall test and verify the amounts of back wage paid to the employees.
 - a. If amounts paid agree with the verification: the LRS shall record the restitution paid in LR2000; the LCA shall maintain documentation of the restitution paid.
 - b. If amounts paid do not agree with the verification, the LRS/LCA shall contact the employer/prime contractor for further corrective action.
3. The LRS/LCA shall calculate and inform the employer of any CWHSSA liquidated damages that may be assessed for overtime violations.

- D. **Failure to respond or appeal.** If the employer fails to respond or appeal, the LRS/LCA shall notify the prime contractor by receipted mail (e.g., certified mail or other service requiring acknowledgement of receipt) of the employer's failure to correct.

1. The notification shall include:
 - a. Summary of findings
 - b. Schedule of back wages due
 - c. Notice of prime contractor's obligation to correct and its right to appeal (See Section 7-4, *Notice of right to appeal.*)
2. The LRS/LCA shall take actions necessary to withhold from contract payments, if warranted.

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

5-12 **Assessing CWHSSA liquidated damages.** Contractors and subcontractors that violate the overtime provisions of the Contract Work Hours and Safety Standards Act (CWHSSA) are liable for the unpaid wages and liable to the United States for liquidated damages. Liquidated damages are calculated at the rate of \$10 per day, per violation (see 5-10(D)).

- A. **Notice of intent to assess.** In every case where overtime violations are disclosed, the LRS/LCA shall notify the employer in writing of the amount of liquidated damages computed, the bases for the computations, and the agency's intent to assess. A copy of the notice shall be sent to the prime contractor when the employer involved is a subcontractor. The notice shall inform the employer that it has 60 days to file a written request for a reduction or waiver of liquidated damages and that absent a timely reduction or waiver request, the determination shall be final.
- B. **Reduction or waiver of liquidated damages.** The employer may request a reduction or waiver of liquidated damages. The only grounds for approving a reduction or waiver are where the computation of liquidated damages is incorrect or that the violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer. The employer's request must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted.
 1. If the computed amount of liquidated damages is \$100 or less, the LRS may issue a final order affirming, reducing or waiving liquidated damages.
 2. If the computed amount of liquidated damages is greater than \$100 but no more than \$500, the RLRO may issue a final order affirming, reducing or waiving liquidated damages.
 3. If the computed amount of liquidated damages is greater than \$500, the matter must be forwarded to DOL through the RLRO and HQLR for disposition. The RLRO shall forward to HQLR a copy of the notice, the employer's request and any other pertinent documentation or information, together with a recommendation whether to affirm, reduce or waive the amount of liquidated damages. After review, HQLR shall either issue a final order affirming the assessment of liquidated damages, or transmit a recommendation for reduction or waiver to DOL for final decision.

4. Final orders that affirm or reduce the amount of liquidated damages shall state that the employer may appeal the order to the U.S. Claims Court, Washington, DC, within 60 days of the date of the order.
5. LCAs must refer any request for reduction or waiver to the appropriate LRS *except* that state agency LCAs may refer such requests directly to DOL.

C. **Implementing the final order.** The LRS/LCA shall take appropriate action to implement a final order affirming, reducing or waiving the amount of liquidated damages assessed, or an assessment that has become final absent a request for reduction or waiver. All liquidated damages assessed must be paid over to HUD.

1. If funds have been withheld or placed in a deposit or labor standards escrow account and the amount in reserve is greater than the amount of the assessment, any excess funds shall be released to the depositor or to the entity to which the withheld/escrowed funds belong. (A full refund is likely appropriate when liquidated damages have been waived.)
2. If the amount in reserve (e.g., withholding, deposit, labor standards escrow), if any, is less than the amount required, the additional amount needed shall be collected from the employer. If the employer is unable or unwilling to furnish additional funds, a demand shall be made on the prime contractor.
3. In accordance with Miscellaneous Receipts Act, OLR shall transfer semi-annually to the US Treasury liquidated damages assessed to contractors during the previous six-month period.
4. The LRS shall provide instructions to contractors and LCAs for payment of liquidated damages by wire transfer to the HUD U.S. Treasury account.

5-13 **Liquidated damages arising from a DOL enforcement action.** Where a DOL investigation or other enforcement action discloses CWHSSA overtime violations, DOL will transmit a report of the action and its computation of associated liquidated damages to the relevant Federal agency for its disposition. The LRS shall follow the instructions at paragraph 5-12 to assess and implement the final order regarding these liquidated damages.

Related Appendices

III-1 Willful Violations/Falsification Indicators

Chapter 6 (Reserved)

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;
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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.

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.

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.

Chapter 8 ADMINISTRATION AND BASIC ENFORCEMENT OF PREVAILING MAINTENANCE WAGE RATES DETERMINED OR ADOPTED BY HUD

- 8-1 **Introduction.** This chapter concerns the administration and enforcement of prevailing maintenance wage rates determined or adopted by HUD for the operation of Public and Indian housing covered by such rates. For ease of reference, the acronym “MWD” is used to mean maintenance wage decisions and, generally, prevailing maintenance wage rates determined or adopted by HUD. In addition, *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; *PHA* shall mean the appropriate staff of the Public housing agency involved, and *TDHE* (tribally-designated housing entity) shall mean the Indian tribe, Indian housing agency or other tribally-designated housing agency administering the program.

Note: This chapter is ***not*** applicable to programs other than the operation of low-income housing projects (USHA) or affordable housing (NHASDA) and the agencies administering such programs.

MWDs are statutorily mandated and, for the most part, are administered and enforced in the same manner as Davis-Bacon and Related Acts (DBRA) labor standards in HUD programs.

- 8-2 **Applicability of MWDs.** HUD-determined (or adopted) prevailing wage rate decisions (MWDs) are applicable to the operation of certain Public and Indian housing projects.
- A. **Low-income housing projects operated by Public housing authorities.** MWDs are applicable to the operation by PHA of low-income housing projects as such projects are defined by the U.S. Housing Act of 1937, amended, (USHA), pursuant to Section 12 of the Act.
 - B. **Affordable housing operated by Indian tribes and/or tribally-designated housing entities.** MWDs are applicable to the operation of affordable housing by a TDHE as such housing is defined by the Native American Housing and Self-Determination Act of 1996, as amended (NAHASDA), pursuant to Section 104 of the Act.
 - C. **Exceptions to MWD wage rates.**
 - 1. **Volunteers.** Bona fide volunteers are excepted from MWD coverage for both PHA and TDHE operations. (See also HUD regulations 24 *CFR Part 70*, and paragraphs 2-8 *Volunteers*, and 11-31, *Volunteers*.)

2. **Tribally-determined wage rates.** Prevailing wage rates determined under the auspices of a tribal law or regulation that are applicable to the work or contract involved supersede and render MWDs ineffective. (See also *ONAP Program Guidance 2003-04.*)
- 8-3 **Issuance of maintenance wage determinations.** MWDs are issued by the LRS to each PHA and TDHE operating covered housing within that LRS's jurisdiction. MWDs are issued on form HUD-52158, *Maintenance Wage Determination*. The LRS shall make every effort to ensure that the MWD is issued at least 30 days in advance of the beginning of the respective PHA's/TDHE's fiscal year.
- 8-4 **Use and effectiveness of maintenance wage decisions.** Unless otherwise specified by HUD, the determination shall be effective for a one-year period beginning the first day of the PHA's/TDHE's fiscal year. During the effective period, PHAs/TDHEs may utilize the determination for all routine maintenance work activities without further review or approval from HUD. An expired determination is void.
- 8-5 **Additional classifications.** The PHA/TDHE may request an additional classification and wage rate, as necessary, for any class of maintenance laborer or mechanic which is not listed on the MWD and which is to be employed in the operation of the covered housing by either the PHA/TDHE or a contractor or subcontractor. HUD will issue the appropriate additional classification(s) and wage rate(s) as an addendum to the original MWD. Unless otherwise specified, the additional classification(s) and wage rate(s) shall be effective, retroactively, to the date of the original MWD and shall expire with the original MWD, accordingly.
- 8-6 **Contract Work Hours and Safety Standards Act (CWHSSA).** *Contracts* for covered maintenance work in excess of \$100,000 are subject to the overtime provisions of the CWHSSA. Force account labor (i.e., maintenance workers employed directly by the PHA/TDHE) are *not* covered by CWHSSA overtime provisions. (See 2-2(B), *Contract Work Hours and Safety Standards Act.*)
- 8-7 **Inapplicability of certain labor provisions associated with DBRA.** While the administration and enforcement of MWDs generally mirrors the same standards and expectations associated with DBRA requirements, there are certain DBRA provisions that are not applicable to MWD work/contracts. These differences are described below.
 - A. **MWD wage payments/frequency of payments.** MWD wage payments must be made at the full amount of wages due free and clear and without subsequent deduction except as otherwise provided by law or regulation. MWD payments may be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A period may not be of any duration longer than semi-monthly.

B. Recordkeeping. Employers (PHAs, TDHEs, contractors and subcontractors) engaged on work subject to MWDs must make, and maintain for no less than three years following the completion of the work, records containing information demonstrating compliance with the MWDs applicable to the work. These records must at a minimum contain for each laborer or mechanic employed:

1. Employee name, address and Social Security Number;
2. Correct work classification(s);
3. Hourly rate(s) of monetary wages paid;
4. Rate(s) of any bona fide fringe benefits provided;
5. Number of daily and weekly hours worked;
6. Gross wages earned;
7. All deductions taken; and
8. Actual net wages paid.

Such records must be made available for inspection or transcription by authorized representatives of the PHA, TDHE and/or HUD.

8-8 **Contracts for maintenance work or services.** This paragraph and the following paragraphs assume that a proper determination of MWD labor standards applicability has been made for the contracts(s) involved and that the correct MWD wage decision has been assigned.

Note: HUD observes for maintenance contracts the \$2,000 threshold instituted for contracts subject to the Davis-Bacon and Related Acts. (See also On the Mark! #11, *What's new about maintenance contract thresholds?*)

A. PHA/TDHE responsibilities. For each maintenance contract the PHA/TDHE shall:

1. Ensure that the current MWD and contract standards, are incorporated into the contract (e.g., contract specifications).
2. Ensure that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in Federal programs.
3. Provide technical support to the prime contractor and subcontractors concerning prevailing wage requirements.
4. Identify and process requests for additional classifications and wage rates, as needed.
5. Conduct on-site interviews with the maintenance laborers and mechanics employed by contractors and subcontractors.
6. Perform periodic "spot-check" reviews of contractor and subcontractor records, including comparison of on-site interview data against such records. (See 8-7(B), *Recordkeeping.*)

7. Notify the contractor, and any subcontractor involved, of any labor standards deficiencies and required corrective actions.
8. Receive and screen employee and other complaints or allegations of prevailing wage violations.
9. Ensure full correction of labor standards deficiencies or violations.
10. Dispose of deposit/escrow accounts established for labor standards purposes.
11. Establish and maintain full documentation of all labor standards administration and enforcement activities.

Section I – Contract Administration

- 8-9 **Contract wage decision and standards.** The bid solicitation, if any, and the resulting contract for covered maintenance work must contain the applicable MWD and the HUD-5370-C, *General Conditions for Non-construction Contracts – Sections 1 and/or 2*, as appropriate. These are often inserted in the bid/contract specifications.
- A. **Maintenance wage determination.** The wage decision lists the work classifications approved for the project and the minimum wage rates that must be paid to maintenance laborers and mechanics performing the work of the corresponding classifications. A multi-year contract for maintenance work or services must incorporate any subsequent MWD which may be issued to the PHA/TDHE during the life of the contract.
- B. **Contract standards.** The contract clauses prescribe the responsibilities of the contractor and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages and liquidated damages which may be found due. These contract clauses enable HUD or the PHA/TDHE to enforce the Federal labor standards applicable to the project/contract. The HUD-5370-C is available at HUDClips.
- C. **Acceptable methods of incorporation.** The applicable MWD and HUD-5370-C may be incorporated into bid solicitations (if any) and contracts by “hard-copy”, incorporation into other documents, or by reference. See 3-12(C) for additional guidance on acceptable incorporation methods.
- 8-10 **Verification of contractor eligibility and termination of ineligible contractors.** No contract may be awarded to any contractor that is debarred, suspended or otherwise ineligible to participate in Federal or Federally-assisted contracts or programs. The labor standards clauses (i.e., HUD-5370-C) insert into the contract a certification of eligibility such that the holder of the contract, the prime contractor and all subcontractors, certify that they are eligible for award. The PHA/TDHE shall verify the eligibility of all prime contractors prior to contract award by reviewing the Excluded Parties List available on-line at: www.epls.gov The PHA/TDHE shall make a record of the verification in the project files. Any contract awarded to a prime contractor or subcontractor that is found to be ineligible for award must be terminated immediately.
- 8-11 **Additional classifications and wage rates.** If the MWD does not include a work classification(s) required for the execution of the contract work, the employer (contractor or subcontractor) may request an additional classification(s) and wage
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rate(s) through the PHA/TDHE. Generally, additional classification and wage rates requests are not approved for apprentices, trainees, helpers or welders.

- 8-12 **Labor standards administration and enforcement files.** The PHA/TDHE is responsible for the creation, maintenance and preservation of labor standards files for each prevailing wage project administered by them. HUD does not prescribe for PHAs/TDHEs any particular file system or components. *Except* that the file system demonstrates that the LCA has successfully carried out its labor standards responsibilities.
- 8-13 **Final review.** Prior to the final payment on the contract, the PHA/TDHE shall conduct final close-out review for each contract. Final review considers whether there are any outstanding labor standards issues. HUD imposes no particular protocols concerning a final review, however, PHAs/TDHEs must ensure that all labor standards issues have been fully resolved or that appropriate provisions (e.g., escrow account) have been or will be put in place to ensure full compliance.

Section II – Basic Enforcement.

- 8-14 **Labor standards compliance monitoring.** Periodic monitoring is conducted to ensure all contractors and subcontractors are performing the contract work in accordance with the applicable labor standards provisions. The two key aspects of periodic monitoring include spot-check reviews of contractor and subcontractor records and on-site interviews with laborers and mechanics employed under the contract.
- A. **Spot-check reviews.** The PHA/TDHE shall monitor the labor standards performance of each prime contractor and subcontractors (employers). Spot-check reviews shall consist of random examinations of the employers records to detect labor standards violations such as underpayments, unapproved work classifications, and failure to pay premium pay for overtime hours. The first spot-check review for any employer may provide a pattern of satisfactory labor standards performance, in which case subsequent reviews may be less frequent and/or less intensive.
- B. **On-site interviews (MWD).** The PHA/TDHE is responsible for conducting on-site interviews with maintenance laborers and mechanics and recording the information gathered. (PHAs/TDHEs may find form HUD-11, *Record of Employee Interview*, helpful in this regard.) PHAs/TDHEs are encouraged to utilize judgment in assessing whether and with whom on-site interviews should be conducted during any site visit. Such interviews shall be conducted in a manner consistent with on-site interviews conducted on contracts/projects subject to DBRA requirements. (See 5-8(C), *On-site interviews*.)
1. **Comparison to employer records.** Information collected during on-site interviews shall be compared to the respective employer's corresponding records. The result of the comparison, including any discrepancies, shall be noted. Any discrepancies disclosed during the comparison must be brought to the employer's attention and must be resolved.
 2. **Targeted interviews.** Where spot-check reviews and/or the comparison of interview statements to employer records indicate that underpayments may exist, it is appropriate to target interviews to particular crafts or to the employees of a certain employer(s).
- C. **Questionnaires.** Questionnaires may be mailed to employees when the PHA/TDHE has reason to doubt the accuracy of the employer's records and underpayments are suspected. These questionnaires are used to test the accuracy of the records and/or to obtain the employees' versions of their
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working conditions. The information gathered through the use of questionnaires may be used to develop complaints of underpayment. (See *Federal Labor Standards Questionnaire*, form HUD-4730.)

- 8-15 **Compliance principles, common discrepancies and corrections.** Many of the labor standards requirements associated with maintenance wage rates are similarly in effect for DBRA contracts/projects. For example, both involve the payment of not less than the applicable prevailing wage rate for various classifications of work; both involve certain recordkeeping requirements; both involve the payment of wage restitution where underpayments have occurred. To the extent applicable, PHAs/TDHEs should follow the guidance at 5-9 through 5-13 to correct discrepancies related to maintenance prevailing wage and other labor standards requirements.

Chapter 9 DEPOSITS AND ESCROW ACCOUNTS

- 9-1 **Introduction.** HUD programs that carry provisions requiring the payment of prevailing wage rates (i.e., Davis-Bacon or HUD-determined wage rates) require the full compliance of the principal contractor and any subcontractors before any project or contract is finally accepted. 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, *IRS* shall mean the Internal Revenue Service; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. All references to LR2000 likewise refer to any successor program/software/system instituted by HUD to manage such activity.

Sometimes, due to a variety of reasons, certain labor standards issues are not or cannot be resolved in time to meet other project close-out schedules. In order to permit a final closing/close-out to proceed while certain labor issues are outstanding, a deposit account (HUD-administered projects, e.g., FHA-insured, Section 202, Section 811) or an escrow account (LCA-administered projects, e.g., CDBG, HOME, HOPE VI) may be established as a guarantee to ensure the payment of any wages which have been or may be found due to workers that were employed in the construction of the project. Deposit and escrow accounts may also hold fringe benefits payments that are due to plans or programs and/or liquidated damages that have been or may be assessed for violations of Contract Work Hours and Safety Standards Act (CWHSSA) overtime provisions, where applicable.

- A. Every effort should be made to fully resolve all labor standards issues and thereby avoid imposition of a deposit/escrow requirement. However, when a deposit/escrow is not avoidable, every effort must be made to ensure that the amount required does not exceed the amount(s) reasonably expected to be necessary to ensure the payment of any wages and/or CWHSSA liquidated damages due. Deposit and escrow accounts are remedial – necessary to ensure a corrective action. Deposit and escrow accounts are *not* punitive, i.e., imposed as a punishment or penalty.
- B. Generally, only one deposit/escrow account is established per project; however, more than one deposit may be made to any deposit/escrow account.
- C. Once a deposit or escrow is created, it is critical that the HUD or LCA staff continue to address any issues that led to its creation and, ultimately, dispose of the deposit/escrow account. Necessary actions may include verifying restitution payments or making such payments to underpaid workers; completing reviews to determine exact amounts of wage restitution due and communicating the findings to the prime contractor and employer (s) involved; preparing cases that are in dispute for referral to DOL; and assessing liquidated damages for CWHSSA overtime violations. The best disposition in all cases is disbursing all

of the funds from the account to appropriate parties and bringing it to a zero balance.

- D.** All HUD deposit accounts, including disbursements from such accounts, must be recorded and managed in LR2000 or its successor.

This chapter is prepared in two sections. The first deals with HUD deposit accounts, and the second with LCA escrow accounts.

Section I – HUD Deposit Accounts

- 9-2 **HUD-initiated deposits.** HUD-initiated deposits are typically created for HUD-administered projects (e.g., FHA, 202, 811) to induce HUD to conclude a final closing/endorsement without awaiting resolution on certain labor standards issues. HUD-initiated deposit requirements may be imposed only with the approval of the Regional Labor Relations Officer. The LRS assesses when a deposit appears necessary and recommends to the RLRO imposition of a deposit requirement and the amount that will be required in order for final closing/endorsement to proceed. The principal contractor or other party (e.g., sponsor, owner, developer) shall deposit this amount with the U.S. Treasury in the account specified by HUD. Deposits are generally made on the date of or just prior to the date of the final closing/endorsement. No other means (e.g., escrow accounts held by a mortgagee or other financial institution) shall be used to ensure resolution of labor standards issues on HUD-administered projects.
- 9-3 **LCA-initiated deposits.** HUD deposit accounts may also be initiated by local contracting agencies. In these cases, LCAs are turning over to HUD wage restitution that has been found due and collected on behalf of underpaid workers who could not be located after three years (*aka* unfound worker accounts) and/or liquidated damages that have been assessed and collected for CWHSSA overtime violations. An LCA must notify HUD of its intent to initiate a deposit account and obtain a deposit ticket and banking instructions to accomplish the transfer of funds to the U.S. Treasury.
- 9-4 **Purposes for deposit accounts.** There are four defined purposes for deposit requirements, each with remedies and disposition.
- A. **Deposit purpose 1:** To proceed to closeout/final closing *without awaiting receipt of evidence that workers have received wages determined to be due them* in the respective amounts listed on a Schedule attached to the Deposit Agreement (see 9-10 for more information about deposit agreements and schedules).
1. In these cases, there is no dispute as to the amounts that are due and to whom those amounts are due. However, the contractor/employer is not yet able to produce evidence that all of the affected workers have received the wage restitution due. For example, the contractor or subcontractor may not have submitted a certified correction payroll report or has not been able to locate all of the affected workers (*i.e., unfound workers*). The LRS determines the deposit amount by calculating (or the contractor may calculate and the LRS will confirm) the total gross amount of wages, including any fringe benefits, due and, as yet, undocumented or unpaid.
2. **Disposition:** After the deposit is made, the contractor/employer continues to pay the workers that can be located. As the
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contractor/employer produces evidence of such payments to workers (certified correction payroll reports), amounts equal to the payments are released back to the depositor. If the contractor cannot locate certain employees (unfound workers), HUD continues to hold an amount sufficient to pay the wage restitution due to the unfound workers and continues attempts to locate such workers for a period of three years after the date the deposit was established. At this point, the contractor/employer *must* be required to provide the last known mailing address and full Social Security Number for each unfound worker. After this three year period, HUD is not obligated to continue the search for unfound workers and any funds remaining in the deposit account are retained by HUD.

- B. Deposit purpose 2:** To proceed *without awaiting an administrative determination of the wages which may be due and unpaid* for work performed in the construction of the project on account of employers named on a schedule attached to the Deposit Agreement.
1. In these cases, the underpaid workers and the amounts of wage restitution due have not yet been determined. For example, an investigation by HUD or DOL may be ongoing, or restitution calculations may not be complete. To determine the amount required for deposit, the LRS will estimate as closely as possible the full amount of wages, including any fringe benefits, which may be due and the amount of liquidated damages that may be computed for any CWHSSA overtime violations. DOL will supply the estimate where it is conducting the investigation. The deposit schedule indicates which employer or employers are involved and the amount estimated due relative to each.
 2. **Disposition:** When the amounts of wages (and any liquidated damages) have been finally determined by HUD (or DOL, as appropriate), HUD shall continue to hold funds sufficient to pay the total amounts determined due. Any excess funds that are not otherwise required to ensure proper payment to other employees or for other liquidated damages that may be assessed may be released to the depositor.
 - a. **Conversion to purpose “1”:** If the contractor/employer agrees with the determination of wages due, the deposit converts to a Purpose 1 (above). The contractor pays the affected workers in accordance with the schedule of wages due and submits certified correction payroll reports as evidence of such payments. Amounts are released to the depositor as evidence of payments to workers is produced. It is always preferable for the *employer* to make the restitution payments directly to the employees. However, if the employer is unable to do so, HUD may make disbursements from the account directly to the underpaid workers (in accordance with the schedule). Restitution for unfound

workers is retained as described above with the 3-year period beginning on the date that agreement on the determination of wages due is reached.

(1) **Note:** For cases involving DOL investigations, DOL will generally secure a release from the depositor permitting DOL to collect from HUD the deposited funds and to pay the workers directly from those funds. Upon receipt of such release and written instruction from DOL, HUD shall pay over to DOL the total amount authorized by the depositor. Any amounts secured for CWHSSA liquidated damages are retained by HUD. Any excess funds not otherwise required to ensure wage restitution may be released to the depositor.

b. **Conversion to purpose “3”:** If the contractor/employer appeals the determination of wages due, the deposit converts to a Purpose 3 (below).

C. **Deposit purpose 3:** To proceed *without awaiting the outcome of an appeal* which has been filed, or is to be filed with DOL by the contractor or employer contesting the finding of HUD or DOL, as the case may be, that wages for work performed in the construction of the project are due and unpaid to workers as named and in amounts shown on a schedule of wages due attached to the Deposit Agreement.

1. For these cases, a final determination has been rendered by HUD or DOL, and the contractor or employer has requested a hearing with DOL concerning the findings. HUD will maintain the deposit pending the outcome of all administrative appeals.

2. **Disposition:** When a final decision is reached and/or all administrative appeals are exhausted, HUD will disburse funds from the deposit account in accordance with the judgment rendered. The agreement will convert to a Purpose 1 for the total amount of wage restitution found due. The excess balance, if any, shall be returned to the depositor unless ordered otherwise in the judgment, or unless the funds are required to ensure payment of other wage restitution.

D. **Deposit purpose 4:** Where *liquidated damages* have been calculated and/or assessed for violations pertaining to CWHSSA overtime provisions.

1. In these cases, an investigation or determination of wages due involving CWHSSA overtime violations has resulted in calculations for liquidated damages. HUD has issued or will issue a notice of intent to assess the liquidated damages calculated. An amount equal to the liquidated damages calculated is placed on deposit.

2. **Disposition:** If the liquidated damages amount has been assessed and the contractor/employer has not contested the assessment, the full amount assessed is retained by HUD. If the contractor requests a reduction in whole or in part of the liquidated damages assessed, the calculated amount is retained until a final decision on the assessment is reached. Once a final decision is rendered, the final amount assessed (if any) is retained and any excess shall be returned to the depositor provided that the funds are not required to ensure payment of other CWHSSA liquidated damages or wage restitution.

- 9-5 **Mixed deposits.** Some projects may approach final closing with a variety of issues pending and may require a *mixed deposit* as a result. A mixed deposit means that funds are needed to ensure payment of wage restitution (and liquidated damages, where applicable) arising out of different kinds of situations. For example, there may be a subcontractor that agrees with a finding of underpayment but that cannot locate all of the underpaid employees (i.e., unfound workers) which would require a Purpose 1 deposit, while another subcontractor has appealed a determination of wages due requiring a Purpose 3 deposit. In these cases, only one deposit agreement and schedule is prepared and one account is established. Differentiations between multiple purposes of a mixed deposit account are delineated on the deposit schedule (see 9-10, below).
- 9-6 **Cross-withholding on projects subject to Davis-Bacon requirements.** DOL Davis-Bacon regulations (*effective 6/28/83*) permit cross-withholding for labor standards issues where the same prime contractor is involved on the projects where cross-withholding is proposed. In such cases, the deposit schedule shall provide information showing that cross-withholding parameters are met (i.e., that the prime is involved in all projects relating to the cross withholding), and shall clearly delineate the amount(s) associated with all projects and employers involved. In accordance with Miscellaneous Receipts Act, OLR shall transfer semi-annually to the US Treasury liquidated damages assessed to contractors during the previous six-month period.
- 9-7 **Depositor.** The depositor is the entity (firm, business, person) whose money is being used to fund the deposit. Usually, the depositor is the prime contractor; however, the depositor may be the developer or owner of the project. It is critical that the depositor is accurately named on the Deposit Agreement and Schedule.
- 9-8 **Approval for imposition of deposit requirement.** The RLRO must approve in advance any and all deposit requirements that are imposed and the deposit schedule that will record the deposit made. Whenever the LRS deems that a deposit should be required for final closing/endorsement, the LRS shall submit a recommendation for the consideration of the RLRO.
- A. The LRS shall provide to the RLRO an explanation of the conditions that warrant a deposit and the proposed deposit schedule.

- B. The RLRO may approve, modify or disapprove the deposit requirement proposed by the LRS and shall notify the LRS in writing of his/her decision. The RLRO shall specify for the LRS any changes that the RLRO may require on the deposit schedule.
- C. The RLRO may impose a deposit requirement on his/her own accord. In such cases, the RLRO will determine the purposes and amounts for the deposit schedule.

9-9 **Notification of deposit requirement.** Following RLRO approval, the LRS (or RLRO or his/her designee) shall provide written notice of the deposit requirement to the Offices of Housing and Counsel, and the prime contractor. Such notice may be made by email and may also serve as OLR final closing clearance. A deposit agreement, deposit schedule and deposit ticket specific to the project involved shall be provided to these parties prior to final closing.

9-10 **Deposit agreements, schedules and tickets.** Each deposit must have its own deposit agreement, deposit schedule and deposit ticket. No deposit agreement is complete without a schedule that accounts for the exact and full amount placed on deposit. In addition, no deposit should be made without a deposit ticket that carries identifiers so that the deposit can be readily matched to the corresponding transaction in the U. S. Treasury. *Accuracy and completeness of the data within the deposit agreement, schedule and ticket are critical for the Office of Labor Relations to manage deposit accounts.* Typically, these documents are prepared by the LRS.

- A. **Deposit agreements.** The deposit agreement identifies the project involved, the purpose(s), amount, and depositor for the deposit account. The LRS shall use form HUD-4732, *Labor Standards Deposit Agreement*, (available at HUDClips) and shall complete the blocks on the form relating to the project number and name; the amount required for deposit; the purpose(s) involved; depositor name, contact information, tax identification number, address; and the deposit ticket number obtained from LR2000. The deposit agreement form may not be altered in any way without the prior approval of the Director of Labor Relations (HQLR).
- B. **Deposit schedules.** The deposit schedule delineates, with regard to each employer involved, the purpose(s) for the deposit and accounts for the exact and total amount placed on deposit. The deposit schedule header must carry the project name, number and location; the prime contractor name and address, and, if the depositor is other than the prime contractor, the depositor name and address; and the page number and total number of pages (e.g., Page 1 of 4). The LRS (or other OLR staff so assigned) shall prepare the schedule following the sample provided in the appendix (See Appendix III-2). *Note: Deposit schedules shall not include any person's social security number.*

- C. **Deposit tickets.** The deposit ticket provides instructions for the depositor's banking institution so that the required sum will be deposited to the proper U.S. Treasury account. In addition, the deposit ticket carries identifiers (i.e., control number and deposit number) so that the deposit can be properly matched by HUD to the correlating U.S Treasury transaction and validated within LR2000. The LRS shall use form HUD-4733, *Wire Transfer Instructions for Labor Standards Deposit Accounts*, (available at HUDClips). Deposit ticket identifiers are generated in LR2000 as data are entered by the LRS.

9-11 **Deposit verification.** All deposits must be documented and verified to HUD's satisfaction prior to final closing conclusion and/or disbursement from a deposit account.

- A. **Final closing.** If a deposit is required as a condition for final closing, a receipt from the financial institution that completed the required deposit must be provided before the closing is concluded. OLR shall not lift a final closing condition without such documentation.
- B. **Verification in LR2000.** Deposits must be verified in LR2000, via CFO data report import, prior to any disbursement from a deposit account.
- C. **Aged deposits.** For "aged" deposit accounts; i.e, deposits created prior to FY 2005, HQLR may permit alternate verification methods. Alternate methods may include copies of wire transfers; checks; prior disbursements, etc.

9-12 **Disbursements.** Disbursements from deposit accounts are made for wage restitution payments to underpaid workers; refunds to the depositor as outstanding issues are resolved; payments to trust funds or other entities having a legitimate claim to the funds; and for the transfer of funds to DOL. No disbursement shall be made from a deposit account without prior verification that the deposit has been received (see 9-11 above) and sufficient documentation as to the disbursement proposed. A copy of the deposit schedule must be submitted to HQLR prior to any disbursement.

Disbursements are requested by a refund voucher (VR) or payment voucher (VP). All refunds must be made by Automated Clearing House (ACH) direct deposit. Payments (e.g., wage restitution) may be made by ACH/direct deposit or by check, at the payee's discretion. Transfers to DOL or other Federal agencies are typically accomplished via an inter-agency transfer (IPAC). Disbursements are based on allocations that are calculated and entered into LR2000. Vouchers are generated from the allocations made.

9-13 **Payee verification.** No disbursement for wage restitution shall be made unless the payee's address and identity have been verified. The LRS shall send a locator letter to each worker at his/her last known address. The letter shall request the worker to provide a current mailing address and their social security number (SSN). A sample locator letter is provided in the appendix (see III-3). Locator letters *shall not* indicate the amount of wage restitution involved. Worker verification information may be provided via return mail, telephone or email, at the worker's preference. The SSN provided by

the worker must be matched to the SSN on file so as to avoid payment to a false claimant. If the worker declines to provide a full SSN or if the SSNs do not match, the LRS should consult with his/her RLRO for further guidance.

- 9-14 **Income tax withholding from wage restitution payments.** HUD is required to deduct Federal income taxes from wage restitution payments. The Internal Revenue Service (IRS) has supplied standard withholding rates for HUDs use¹. These rates may not be modified by HUD. The standard rates are:

Federal Income Tax	Social Security	Medicare
.25	.062	.0145

Allocations and vouchers for wage restitution payments must be made for the *net* amount (after tax withholding) of wages due.

- A. **Tax withholding table.** The LRS shall prepare and maintain a table in a format provided by HQLR that accurately lays out all of the information required in the format including: the project name and number; the employer name and EIN (if known); the name, address, SSN, and other contact information for each payee; the gross amount, deductions taken and net amount paid. The LRS shall prepare a separate table for each project.
- B. **Tax withholding notice.** The LRS shall also provide a written tax withholding notice for each wage restitution payee. The notice can be made by letter or electronic mail. (A sample tax withholding notice is provided in the appendix, *see* III-4.)

- 9-15 **Preparing vouchers.** Allocations and vouchers for payment or refund are generally initiated by the OLR staff assigned to dispose of the deposit. Each voucher must be approved by the RLRO and by the Director of Labor Relations. Vouchers initiated by HQLR staff must be approved by the Director of Labor Relations and the Director or Deputy Director of the Office of Departmental Operations and Coordination.

Vouchers carry identifiers (e.g., control number and voucher number) so that the disbursement can be properly matched by HUD to the correlating U.S Treasury transaction and validated within LR2000. The identifiers are generated by LR2000 as data are entered. After the identifiers are generated by LR2000, the OLR staff must prepare a paper voucher using form HUD-4734, *Labor Standards Deposit Account Voucher*, (available at HUDClips).

In order to request any wage restitution payment or refund, the payee must provide a tax identification number (TIN); e.g., employer identification number (EIN) or social security number (SSN). Tax identification numbers must be recorded in LR2000.

¹ HQLR will verify with IRS the standard withholding rates each year. OLR field staff will be informed of any changes.

However, the HUD-4734 submitted to HQLR *shall not* include the TIN. HQLR shall retrieve the TIN from LR2000 for the HUD-4734.

- A. **ACH/direct deposit.** In order to request an ACH/direct deposit, the OLR staff must obtain banking information so that the funds are sent to the proper account. This information includes the name and location of the bank; the bank's ABA routing number for ACH/direct deposit transactions (this is *always* a 9-digit number); the account number and name on the account. The voucher identifiers and the payee banking information and tax identification number are entered into the appropriate boxes on form HUD-4734.
- B. **Check.** A check may be ordered *only* for a wage restitution payment. The payee must provide a mailing address and tax identification number. The voucher identifiers, and the payee address and tax identification number are entered into the appropriate boxes on form HUD-4734.
- C. **Inter-agency transfer (IPAC).** Transfers to other Federal agencies are made within the U.S. Treasury. The receiving agency must supply the bank name (usually TREAS NYC), ABA routing number, agency name (e.g., U.S. Department of Labor), Agency Location Code and Disbursement Office Identification Number, if applicable.
- D. **Process for Reconciling transactions and balances for Deposit Account.** After payments have been disbursed, a senior level contractor industrial relations specialist will generate copies of all vouchers for deposits and disbursements for the past 30 days. The vouchers, along with the previous four week copies of the Department's DataMart report for review and reconciliation. Where contradictions are found, the budget officer will work with the CFO accounting staff to resolve the differences.

Until the LR2000 reporting and work system is redeveloped with updated deposit and tax modules, OLR staff will operate in the following manner:

After approval by the Regional Labor Relations Officer of deposit vouchers which include the names and other personal information relating to underpaid employees, the information will be validated in the LR2000 system by a Senior Contractor Industrial Relations Specialist at Headquarters. After validation, the Director of the Office of Labor Relations will approve the vouchers in the system.

After approval by the Director, an OLR management assistant will print out the approved vouchers and any other related documents and hand carry them to the appropriate CFO Accounting Division staff.

The budget officer/analyst for the Office of Office of Departmental

Operations and Coordination (ODOC/OLR) will reconcile the vouchers and payments with the DataMart report.”

- 9-16 **Disposing of deposit accounts.** The primary objective in disposing of deposit accounts is to complete all follow-up actions necessary to achieve resolution of any outstanding issues. Ideally, this would result in full disbursement bringing the deposit to a zero balance. However, there are instances where all follow-up actions have been competently taken and a balance remains. In these cases, the funds remain in the account, but the account is transferred from the Region’s active inventory to HQLR. The RLRO must request such dispositions/transfers from HQLR.
- A. **Unfound workers.** Where workers could not be located and paid, the deposit may be disposed by conversion to an unfound workers account. The LRS must prepare an unfound workers schedule following the example provided in the appendix (*see* III-5), the schedule must accompany the conversion request to HQLR. *Note:* Unfound workers schedules *shall not* include any person’s SSN. If the SSN is known, it must be recorded in LR2000 (e.g., payee table.)
 - B. **Unfound depositor.** Where a refund to the depositor is deemed appropriate but the refund cannot be made because the depositor cannot be located, the RLRO may request conversion to an unfound depositors account.
 - C. **Unclaimed funds.** Where no information is available to indicate the proper disposition for the deposit, for example, if there are no records showing the purpose of the deposit or the identity of the depositor, the RLRO may request that HQLR transfer the deposit to unclaimed funds.
 - D. In accordance with Miscellaneous Receipts Act, OLR shall transfer semi-annually to the US Treasury deposits assessed to contractors during the previous three-year period for which the LRS and RLRO has exhausted all efforts to find the underpaid workers, as well as the depositor.
 - E. In accordance with Miscellaneous Receipts Act, OLR shall semi-annually return to the US Treasury unclaimed funds, deposits to unfound depositors and unfound workers during the previous six-month period, in accordance with procedures established by CFO, OLR and OGC.
 - F. Reconciliation of Deposit Accounts. The primary objective in disposing of deposit accounts is to complete all follow-up actions necessary to achieve resolution of any outstanding issues. Therefore HQLR must reconcile monthly, following procedures established by CFO, all deposit accounts.

Section II – LCA Escrow Accounts for Labor Standards Purposes

- 9-17 **LCA escrow accounts.** LCA’s may establish or require an escrow account in order to

address a variety of contract deficiencies. A labor standards escrow is intended to permit the project/contract to proceed to close-out without awaiting resolution of prevailing wage and reporting issues. LCA staff should calculate the amount that would be necessary to satisfy any wage restitution that has been or may be found due and any liquidated damages that may be assessed for CWHSSA overtime violations. Wage restitution may involve HUD-determined prevailing wages applicable to maintenance work. Only the amount calculated as necessary for wage restitution and liquidated damages should be required for labor standards purposes.

Typically, escrows are funded from contract payments due to the prime contractor for work performed. It may be necessary for the prime contractor to contribute additional funds to the escrow. For ease in reference, this section shall use the term “prime contractor” to represent the entity whose funds were used to fund the escrow.

- 9-18 **Purposes for escrow accounts.** The purposes, remedies and dispositions for labor standards escrow accounts are essentially the same as those for HUD deposits. LCAs may find HUD’s deposit agreement and schedule formats helpful in developing appropriate escrow documents (see 9-10 for more information about deposit agreements and schedules).

- A. **Escrow purpose 1:** To proceed to closeout/final closing *without awaiting receipt of evidence that workers have received wages determined to be due them* in the respective amounts listed on a schedule attached to an escrow agreement.
1. In these cases, there is no dispute as to the amounts that are due and to whom those amounts are due. However, the contractor/employer is not yet able to produce evidence that all of the effected workers have received the wage restitution due. For example, the contractor or subcontractor may not have submitted a certified correction payroll report or has not been able to locate all of the effected workers (*i.e., unfound workers*). The LCA determines the escrow amount by calculating (or the contractor may calculate and the LCA will confirm) the total gross amount of wages, including any fringe benefits, due and, as yet, undocumented or unpaid.
 2. **Disposition:** After the escrow is established, the contractor/employer continues to pay the workers that can be located. As the contractor/employer produces evidence of such payments to workers (certified correction payroll reports), amounts equal to the payments are released the prime contractor. If the contractor/employer cannot locate certain employees (unfound workers), the LCA continues to hold an amount sufficient to pay the wage restitution due to the unfound workers and continues attempts to locate such workers for a period of three (3) years after the date the deposit was established. At this point, the LCA *must* require the contractor/employer to provide the last known mailing

address and full Social Security Number for each unfound worker. After this 3 year period, the LCA transmits the funds to HUD along with a schedule indicating the names, last known mailing addresses, social security numbers and the gross amounts due to the effected workers and the employer(s) for whom they worked. LCAs should contact the LRS for their area for further instructions on transmitting funds to HUD.

B. Escrow purpose 2: To proceed *without awaiting an administrative determination of the wages which may be due and unpaid* for work performed in the construction of the project on account of employers named on a schedule attached to the escrow agreement.

1. In these cases, the underpaid workers and the amounts of wage restitution due have not yet been determined. For example, a compliance review by the LCA, HUD or DOL may be ongoing, or restitution calculations may not be complete. To determine the amount required for the escrow, the LCA will estimate as closely as possible the full amount of wages, including any fringe benefits, which may be due and the amount of liquidated damages that may be computed for any CWHSSA overtime violations. HUD or DOL will supply the estimate where it is conducting the review. The escrow schedule indicates which employer or employers are involved and the amount estimated due relative to each.

2. **Disposition:** When the amounts of wages (and any liquidated damages) have been finally determined by the LCA (or HUD or DOL, as appropriate), the LCA shall continue to hold funds sufficient to pay the total amounts determined due. Any excess funds that are not otherwise required to ensure proper payment for other employers may be released to the prime contractor provided that the funds are not required to ensure payment of other CWHSSA liquidated damages or wage restitution.

a. **Conversion to purpose “1”:** If the contractor/employer agrees with the determination of wages due, the escrow converts to a Purpose 1 (above). The contractor pays the effected workers in accordance with the schedule of wages due and submits certified correction payroll reports as evidence of such payments. Amounts are released to the prime contractor as evidence of payments to workers is produced. It is always preferable for the *employer* to make the restitution payments directly to the employees. However, if the employer is unable to do so, the LCA may make disbursements from the account directly to the underpaid workers (in accordance with the schedule). Restitution for unfound workers is retained as described above with the 3-year period beginning on the date that agreement on the determination of wages due is reached.

(1) ***Note:*** For cases involving DOL investigations, DOL will generally secure a release from the contractor and

any subcontractor involved permitting DOL to collect the escrow funds from the LCA and to pay the workers directly from those funds. Upon receipt of such release and written instruction from DOL, the LCA shall pay over to DOL the total amount authorized by the prime contractor. Any excess funds not otherwise required to ensure wage restitution may be released to the prime contractor.

- b. **Conversion to purpose “3”:** If the contractor/employer appeals the determination of wages due, the deposit converts to a Purpose 3 (below).
- C. **Escrow purpose 3:** To proceed *without awaiting the outcome of any appeal* which has been filed, or is to be filed with HUD or DOL by the contractor or employer contesting the findings of the LCA, HUD or DOL, as the case may be, that wages for work performed in the construction of the project are due and unpaid to workers as named and in amounts shown on a schedule of wages due attached to the escrow agreement.
1. For these cases, a final determination has been rendered by the LCA, HUD or DOL, and the contractor or employer has sought review and determination by HUD or DOL, as appropriate, concerning the findings. The LCA will maintain the escrow pending the outcome of all administrative appeals.
 2. **Disposition:** When a final decision is reached and/or all administrative appeals are exhausted, the LCA will disburse funds from the escrow account in accordance with the judgment rendered. The agreement will convert to a Purpose 1 for the total amount of wage restitution found due. The excess balance, if any, shall be returned to the depositor unless ordered otherwise in the judgment, or unless the funds are required to ensure payment of other wage restitution.
- D. **Escrow purpose 4:** Where *liquidated damages* have been calculated and/or assessed for violations pertaining to CWHSSA overtime provisions.
1. In these cases, a determination of wages due involving CWHSSA overtime violations has resulted in calculations for liquidated damages. The LCA has issued or will issue a notice of intent to assess the liquidated damages calculated. An amount equal to the liquidated damages calculated is placed on deposit.
 2. **Disposition:** If the liquidated damages amount has been assessed and the contractor/employer has not contested the assessment, the LCA transmits the full amount assessed to HUD. If the contractor requests a reduction in whole or in part of the liquidated damages assessed, the

calculated amount is retained until a final decision on the assessment is reached. Once a final decision is rendered, the final amount assessed (if any) is transmitted to HUD and any excess shall be returned to the prime contractor provided that the funds are not required to ensure payment of other CWHSSA liquidated damages or wage restitution.

- 9-19 **Mixed escrows.** Some projects may approach final close-out with a variety of labor standards issues pending and may require a *mixed escrow* as a result. A mixed escrow means that funds are needed to ensure payment of wage restitution (and liquidated damages, where applicable) arising out of different kinds of situations. For example, there may be a subcontractor that agrees with a finding of underpayment but that can't locate all of the underpaid employees (i.e., unfound workers) which would require a Purpose 1 escrow, while another subcontractor has appealed a determination of wages due requiring a Purpose 3 escrow. In these cases, only one escrow agreement and schedule is prepared and one account is established. Differentiations between multiple purposes of a mixed escrow account are delineated on the deposit schedule (see 9-10, above).
- 9-20 **Cross-withholding on projects subject to Davis-Bacon requirements.** DOL Davis-Bacon regulations (*effective 6/28/83*) permit cross withholding for labor standards issues where the same prime contractor is involved on the projects where cross withholding is proposed. In such cases, the escrow schedule shall provide information showing that cross withholding parameters are met (i.e., that the prime is involved in all projects relating to the cross withholding), and shall clearly delineate the amount(s) associated with all projects and employers involved.
- 9-21 **Disbursements.** Disbursements from escrow accounts are made for wage restitution payments to underpaid workers; refunds to the prime contractor as outstanding issues are resolved; payments to trust funds or other entities having a legitimate claim to the funds; and for the transfer of funds to HUD or DOL.
- 9-22 **Payee verification.** No disbursement for wage restitution shall be made unless the payee's address and identity have been verified. The LCA shall send a locator letter to each worker at his/her last known address. The letter will request the worker to provide a current mailing address and their social security number (SSN). (A sample locator letter is provided in the appendix, *see* III-3.) The worker may provide verification information via return mail, telephone or email, at the worker's preference. The SSN provided by the worker must be matched to the SSN on file so as to avoid payment to a false claimant. If the worker declines to provide a full SSN or if the SSNs do not match, the LCA should consult with the LRS for their area.

The LRS shall validate the legitimacy of persons claiming entitlement to wage restitution payments for deceased or incarcerated workers or for making wage restitution payments to anyone other than the worker. Any claim for payment to be made to someone other than the worker must be accompanied by documentation to substantiate the individual's rights to the worker's restitution payment, e.g., certified death

certificates, certified marriage licenses or such records issued by the state, records of incarceration or any other legal document necessary to document the occurrence of the event claimed, or to prove familial relationship. Other records such as the will of the decedent and/or other documentation demonstrating entitlement to payment are acceptable. In the event a will is not available, payment shall be disbursed in accordance with the estate laws of the state in which the worker lived. Whenever sufficiency of the supporting documentation is uncertain, the LRS shall seek the guidance of the Chief Counsel or the Regional Counsel Office.

9-23 **Transferring funds to HUD.** LCAs must transmit to HUD wage restitution due but not paid because the intended payees could not be located (*aka* unfound workers) despite the LCAs efforts, and liquidated damages assessed for CWHSSA overtime violations. (See 9-18A(2) and D(2).) All such transfers must be made by wire transfer.

A. **Wire transfer instructions.** LCAs must contact the LRS for their area to obtain wire transfer instructions before any transfer is made. These instructions are critical because it allows HUD to track and verify the deposit.

B. **Supporting documentation.** LCAs must provide supporting documentation explaining the reason(s) for the transfer.

1. **Restitution for unfound workers.** The LCA must provide an unfound workers schedule identifying the project, the employer, the underpaid workers and the gross amount due each. *Note:* Unfound worker schedules *must* include the last known mailing address and full Social Security Number for each underpaid worker.
2. **Liquidated damages.** The LCA must provide documentation containing the project name, number and location; the employer; the number of employees underpaid; the total amount of CWHSSA wage restitution due; and the amount of liquidated damages assessed.

Related Appendices

- III-2 Sample deposit schedule
- III-3 Sample payee locator letter
- III-4 Sample income tax withholding notice
- III-5 Sample unfound worker schedule

Chapter 10 REPORTS (Davis-Bacon and Related Acts)

- 10-1 **Labor Standards Enforcement Reports.** Department of Labor regulations at 29 CFR Part 5, §5.7 require the submission of two types of labor standards enforcement reports. These enforcement reports concern only wage violations associated with projects or contracts subject to the labor standards provisions of the Davis-Bacon and Related Acts. In this Chapter, *DOL* shall mean the Department of Labor, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. All references to LR2000 likewise refer to any successor program/software/system instituted by HUD to manage such activity.
- 10-2 **Case-driven enforcement reports.** Where underpayments by a contractor or subcontractor total \$1,000 or more, *and/or* where there is reason to believe that labor standards violations are aggravated or willful, the LRS/LCA shall prepare a detailed enforcement report for submission to DOL. (*Note:* The \$1,000 threshold refers to the underpayments of a single employer to its *entire* workforce and not to individual employees.)

There are two categories of enforcement reports: those that simply relay information on enforcement actions that have satisfactorily addressed the violations and there is no further action needed or requested; and those that refer the case to the LRS, RLRO, HQLR or DOL for further action. Such cases may involve a refusal to pay, a dispute, a request for hearing or other administrative review, and/or a recommendation for debarment. (See also *Labor Relations Letter LR-92-02*, and DOL regulations at 29 CFR §5.7(a).)

- A. **Submission protocols.** All enforcement reports must be submitted to DOL through HUD. However, states may submit such reports directly to DOL. LCAs shall submit enforcement reports to the LRS for their jurisdiction. Reports received or prepared by the LRS shall be submitted to the RLRO. The RLRO may transmit the report directly to DOL where the following conditions exist:

1. The underpayments of an employer total \$1,000 or more;
2. There is no reason to believe that the violations were aggravated or willful;
3. Full restitution and any other required payments (e.g., CWHSSA liquidated damages) have been made; and
4. No further action is required or requested.

Absent these conditions, the RLRO shall submit the report to HQLR for its review and transmission to DOL.

- B. Timing of the report.** Labor standards enforcement reports that require or request further action or review must be submitted to DOL within 60 days after the completion of the investigation. “Investigation” in this context includes all compliance monitoring including routine payroll reviews; and all actions taken by the agency or contractor toward disposition of the case such as agreement to pay restitution, refusal to pay and/or request for a hearing. Therefore, the report should not be prepared until *after* final disposition is reached at the local level. It is not necessary to wait until all of the underpaid workers have received the restitution found due to prepare the report.
1. Where the report must be submitted to DOL through HQLR, the RLRO shall furnish the report to HQLR not later than 45 days after completion of the investigation.
 2. There is no timeframe for submission of reports needing no further action, i.e., reports that may be submitted by the RLRO directly to DOL (see 10-2(a) above) .
- C. Content of the report.** The amount of detail needed in the report and any supporting documentation is dependent on the purpose the report will serve. Each enforcement report should contain basic coverage information, project identification and location, the contractor and any subcontractors involved, the nature of the violations, the number of underpaid workers and the total amount calculated due, the disposition of the case and schedule of the wages found due. A report that will be submitted to DOL by the RLRO can be brief. Reports that refer a request for hearing or debarment recommendation must be detailed in narrative and must be accompanied by exhibits which, together, are sufficient to substantiate the violations and document the investigative actions of the agency.

10-3 **Semi-annual Enforcement Reports.** HUD is required to furnish to DOL semi-annual reports (SARs) concerning the volume of DBRA-covered activity and the compliance and enforcement of DBRA labor standards provisions in HUD programs. The reports cover the periods of October 1 through March 31 and April 1 through September 30 of each calendar year. The reports are due to DOL by April 30 and October 31, respectively. HQLR collects data from LR2000 and from each RLRO and prepares and submits the report to DOL. (See also DOL regulations at 29 *CFR* §5.7(b).)

- A. HUD-administered projects.** SAR data relative to projects administered by HUD OLR staff are recorded in and drawn from LR2000. RLROs must ensure that the SAR data in LR2000 are correct and complete not later than six Federal work days in advance of the due date to DOL. HQLR shall begin drawing the LR2000 SARs on the 5th work day in advance of the due date to DOL.

B. LCA-administered projects. LCAs must maintain the data necessary for the SAR and submit the data to HUD on form HUD-4710. The LRS/RLRO shall collect the data (HUD-4710s) from the LCAs in their jurisdiction. RLROs shall compile the LCA data for their region and submit the compiled data to HQLR no later than six working days in advance of the due date to DOL. The HUD-4710 and instructions are available on-line at HUDClips. The HUD-4710 is on-screen fillable and can be transmitted to HUD electronically. States may submit SARs directly to DOL.

10-4 **Contract termination.** Whenever a contract is terminated because of violations of DBRA labor standards provisions, a report must be promptly submitted to DOL. The report must include the name and address of the contractor or subcontractor whose contract has been terminated; and the name and address of the contractor or subcontractor, if any, who will complete the work; the contract number and the amount; and a description of the work to be performed. The report shall be completed by the agency (HUD or LCA) generating the report within 30 days after termination. LCAs shall submit contract termination reports to the LRS for their jurisdiction. All termination reports must be submitted to HQLR through the respective RLRO. States may submit termination reports directly to DOL. (See also DOL regulations at 29 *CFR* §5.7(d).)

Chapter 11 INTERPRETATIONS AND APPLICATIONS

- 11-1 **Introduction.** This Chapter provides additional guidance involving interpretations related to the application, administration and enforcement of Federal prevailing wage requirements. For ease in reference, *DBRA* shall refer to Davis-Bacon requirements applicable via HUD Related Acts; *MWD* shall refer to prevailing wage rates determined or adopted by HUD for covered maintenance work. (See also, DOL's *Field Operations Handbook*, available at the Labor Relations Library and at www.wdol.gov.)
- 11-2 **Business owners.** A laborer or mechanic who owns at least a *bona fide* 20% equity interest in the enterprise in which employed, regardless of the type of business (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a *bona fide* exempt executive – not subject to DBRA/MWD wage requirements. A person with a 20% or greater interest in a business who is required to work long hours, makes no management decision, supervises no one and has no authority over personnel does not qualify for the executive exemption.
- 11-3 **Clean-up work.** Cleaning work performed during construction and as a condition precedent to the acceptance of the completed project is subject to DBRA. Examples include window washing, removal of debris and sweeping. In the absence of a specific classification and wage rate for cleaning on the applicable wage decision, or if a request for additional classification and wage rate is not approved by DOL, cleaners shall be classified Laborers (general) and paid the associated rate on the applicable wage decision. Cleaning performed after completion and acceptance of the construction work in preparation for occupancy and which is not performed under the contract for construction is not subject to DBRA.
- 11-4 **Conservation corps.** (Reserved.)
- 11-5 **Contract award.** Where relevant for DBRA/MWD purposes, a contract shall be deemed awarded in accordance with the following guidelines:
- A. The date the contract is executed.
 - B. The date of the adoption of a resolution or ordinance authorizing the award.
- 11-6 **Convict labor.** There is no prohibition against the use of convict/prison inmate labor on DBRA/MWD-covered work. At the same time, there is no exemption from DBRA/MWD wage requirements for convict/prison inmate labor. Some exemptions from Federal prevailing wage requirements (DBRA/MWD) may be operable in certain cases. For example, some Federally-assisted project may not meet a threshold for DBRA/MWD applicability; the convict/prison labor participants may qualify as exempt force account employees (see 11-11, *Force*

account labor, below) or as *bona fide* volunteers. (See also *Labor Relations Letter LR-92-01*.)

11-7 **Deductions for income taxes.** HUD does not enforce or attempt to provide advice regarding employer obligations to make deductions from employee earnings for income taxes. However, HUD may refer to the Internal Revenue Service or other responsible agency(ies) copies of certified payroll reports that show wages being paid in gross amounts (i.e., without tax deductions) for its review and action it deems appropriate.

11-8 **Demolition.** In most cases, demolition, standing alone, is not subject to DBRA *unless* it will be followed by DBRA-covered construction work. This remains true whether the demolition is financed or assisted with HUD program funds or with other (non-HUD) funding. There are very few exceptions. (See also *Labor Relations Letter LR-09-01*.)

A. **DBRA-covered demolition work when the “character” of the follow-on construction is known.** When demolition is covered by DBRA it is considered “site preparation” and takes on the character of the construction work that will follow. For example,

1. The demolition of a 16-story apartment building that will be followed by the construction of 2-story townhomes is residential construction and subject to a residential wage decision.
2. The demolition of a 4-story apartment building that will be followed by the construction of a community center is building construction subject to a building wage decision.
3. The demolition of an office building that will be followed by the construction of a parking lot is highway construction subject to a highway wage decision.

B. **DBRA-covered demolition work when the character of the follow-on construction is not known.** In some circumstances, it may be known that the demolition will be followed by DBRA-covered construction work, but the character of the follow-on construction is not known at the time the demolition will be performed. For example, it is not known at the time the demolition is conducted whether the follow-on construction will involve residential construction e.g., low-rise apartment buildings (four stories or less), or building construction, e.g., a high rise apartment building (five or more stories). In such cases, a heavy wage decision is applicable.

C. **Inapplicability of MWD rates.** Demolition is not considered “maintenance” in any case. Therefore, MWD rates do not apply to demolition in any circumstance.

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- 11-9 **Disaster relief assistance.** In most instances, Federal disaster assistance channeled through HUD is funding provided under Title I of the Housing and Community Development Act of 1974 (HCDA), as amended. DBRA applicability is determined under the labor standards requirements at Section 110 of the HCDA (e.g., CDBG funds).
- 11-10 **Employee status.** Every person performing the work of a laborer or mechanic in construction or maintenance work covered under DBRA/MWD wage standards is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person. This status, as defined here, is pertinent for prevailing wage purposes *only*. This status regarding Federal prevailing wage requirements does not imply any other obligation on the part of the associated “employer”.
- 11-11 **Excluded professions.** Employees performing work that is primarily executive, professional, managerial, supervisory or clerical in nature are not “laborers and mechanics” for the purposes of DBRA/MWD prevailing wage requirements. (See also 11-14, *Laborers and Mechanics*.)
- 11-12 **Force account labor.** In some instances a government agency (state or political subdivision thereof) may perform DBRA-covered construction work with its own employees. These governmental employees are referred to as “force account” labor. Force account workers are excluded from DBRA coverage. This exclusion stems from the language of most DBRA statutes such that the covered classes of workers are those employed by “contractors and subcontractors” and the concept that governmental agencies are not considered “contractors” or subcontractors” within the meaning of these DBRA.
- A. Non-force account labor.** Any portion of the DBRA-covered work that is not performed with excluded force account labor is subject to DBRA and other labor standards in the usual manner.
- B. Non-excluded force account labor.** Certain HUD related acts (i.e., U.S. Housing Act of 1937, Native American Housing Assistance and Self-determination Act) require the payment of prevailing wages to *all* laborers and mechanics without stipulation that such laborers and mechanics are employed by contractors and subcontractors. Under these statutes, the governmental agency employees must be paid in accordance with the applicable DBRA/MWD requirements.
- 11-13 **Fringe benefits.** An employer may take credit for contributions made for bona fide fringe benefits regardless of whether the particular, or any, fringe benefit is included on the applicable DBRA/MWD wage decision. Employees who are excluded from a fringe benefit plan(s), for any reason, or for whom the cash wages paid and contributions fail to meet the total of the applicable prevailing wage, must receive
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any difference in cash wages. Employers must make contributions to fringe benefits plans on a regular basis, i.e., not less often than quarterly.

- A. **Conventional fringe benefit plans.** Conventional plans are ordinarily those that are common to the construction industry and which are paid directly to the employees in cash or into a fund, plan or program (*aka* “funded” plans). Employers may take credit for contributions made under such conventional plans without requesting the approval of DOL under 29 CFR §5.5(a)(1)(iv).
- B. **Unconventional fringe benefit plans.** Where a particular fringe benefit is not of the conventional type described in the preceding paragraph (A) (e.g., unfunded plans), DOL must determine whether the fringe benefit is bona fide for DBRA purposes (29 CFR §5.5(a)(1)(iv)); similarly, HUD must determine whether the fringe benefit is bona fide for MWD purposes. Employers must produce evidence of such “bona fide” determination in order to take credit for unconventional fringe benefits against the applicable DBRA/MWD wage rate.

- 11-14 **Helpers.** The term helper is defined for DBRA purposes at 29 CFR §5.2(n)(4). Helpers are permitted on a DBRA or MWD contract only if the helper classifications are specified in the applicable DBRA or MWD wage decision or additional classifications and wage rates are approved by DOL (DBRA) or HUD (MWD).
- 11-15 **Laborers and mechanics.** The terms “laborer” and “mechanic” generally include workers whose duties are manual or physical in nature as distinguished from mental or managerial, and include apprentices, trainees, and helpers. These terms *do not* apply to workers whose duties are primarily administration, executive, professional, or clerical, rather than manual. Generally, “*mechanics*” are considered to include any worker who uses tools, or who is performing the work of a trade. All laborers and mechanics must be paid the applicable DBRA/MWD wage rate *regardless of any contractual relationship which may be alleged to exist*.
- 11-16 **Material suppliers.** The manufacture and delivery to the work site of supply items such as sand, gravel and ready-mixed concrete, when accomplished by a bona fide material supplier operating facilities serving the public in general, are not subject to DBRA/MWD requirements.
- 11-17 **Multiple work classifications.** Employees who perform work in more than one work classification may be paid no less than the applicable prevailing wage rate for actual hours worked in each classification, *provided* that the work performed is capable of separation into more than one classification and that time records are maintained to accurately reflect the actual hours worked in each classification involved. Tasks which are normally performed as part of the fundamental trade classification are not separable.

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- 11-18 **Owner-operators of power equipment.** Owner-operators of power equipment will often enter into contracts for services at an hourly rate including both “man and machine”. These hourly rates will include items over and above labor, such as equipment maintenance, fuel, liability, etc. Due to the difficulty of ascribing costs to non-labor costs vs labor costs, HUD and its program clients may accept a combined “man and machine” hourly rate on the responsible employer’s certified payroll *provided* that the combined hourly rate may not be less than the applicable wage rate for the operator of the respective power equipment.
- 11-19 **Owner-operators of trucks and other hauling equipment.** DOL administrative policy holds that DBRA and CWHSSA are not applied to bona fide owner-operators of trucks who are independent contractors. For the purposes of these Acts, certified payrolls do not need to include hours worked or wage rates paid, only the name and work classification “Truck Driver - owner-operator”. This policy does *not* pertain to owner-operators of power equipment such as bulldozers, backhoes, cranes, drilling rigs, etc.
- 11-20 **Payroll certification.** For the purposes of DBRA/Copeland Act payrolls, only an officer of the business or a person authorized in writing by an officer of the business may certify required weekly payroll reports. Signatures must be in ink. Signatures other than in ink, e.g., in pencil, by signature stamp, copies and facsimiles, are not acceptable. (See also *Labor Relations Letter 96-01.*)
- A. **Owners of businesses working with their crew.** HUD permits owners of businesses working on the same job site with their crew to certify to the payment of his/her own prevailing wages in conjunction with the owner’s certification that all of his/her employees have likewise received no less than the applicable prevailing wages. In such cases, the payrolls need only to include the owner’s name, work classification (including the designation as “owner”), and the daily and total weekly hours worked. The rate(s) of pay or amount(s) earned are not required for such owners.
- B. **Owners of businesses that do not work with a crew.** HUD does not permit non-exempt owners of businesses who work alone (e.g., self-employed subcontractors, sole-proprietors) to certify to the payment of their own wages. Such owners must be carried on the certified payroll report of the responsible employer, i.e., the entity under whose auspices the person(s) is engaged on the covered work.
- 11-21 **Piece rate/piece work employees.** Employees whose earnings are calculated by the amount of work produced (rather than hours worked) must receive no less than the applicable DBRA/MWD wage rate based upon the hours of work performed. The employer must divide the piece rate earnings by the actual hours worked to
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determine the “effective” hourly rate. The effective hourly rate must be calculated for each week’s earnings and must be no less than the applicable prevailing wage rate. It does not matter whether the effective hourly rate changes from week to week as long as the result is at least as much as the prevailing wage rate. In the event that the effective hourly rate is less than the applicable prevailing wage rate, the employee must be compensated at the prevailing wage rate for all hours worked.

- 11-22 **Proper work classification.** Questions as to the proper classification for laborers or mechanics performing various types of work are resolved based on area practice. It is immaterial whether the contractor or subcontractor is union or non-union; however, it is relevant whether the prevailing wage rate(s) on the applicable wage decision for the classification(s) in question are based on union agreements or are based on open shop (non-union) wage data.

A. **Prevailing wage rates based on union agreements.** If the prevailing wage rates for the classifications in question are based on union agreements, the prevailing practice concerning work performed in those classifications is that practice observed by contractors and subcontractors signatory to the agreements. Therefore, unless there is a jurisdictional dispute between the craft unions, the duties ascribed to any job classification will be the same as those outlined in the appropriate collective bargaining agreements. If the collective bargaining agreements are silent on the issue, the local unions involved must be consulted.

B. **Prevailing wage rates based on open shop data.** In areas where the prevailing wage rates on the applicable wage decision are based on open shop data, the prevailing practices of open shop contractors in the area are deemed to be area practice.

- 11-23 **Relatives.** There are no exceptions made in the enforcement of DBRA/MWD on the basis of family relationship for relatives performing the work of laborers or mechanics. Such relatives must be paid no less than the prevailing wages applicable to the type of work performed, and must be included on associated payroll records.

- 11-24 **Repair employees.** An employee of an equipment rental dealer or other company that performs repair work on-site is subject to DBRA/MWD if the employee performs more than an incidental amount of work on site.

- 11-25 **Site of work.** The site of work is limited to the physical place or places where the construction called for in the contract/scope of work will remain when the work has been completed *and* any other site where a significant portion of the building or work is constructed, provided that such site(s) is established specifically for the performance of the contract or project. (See also *DOL Field Operations Handbook, 15b04.*)

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- A. **Dedicated support locations.** Batch plants, borrow pits, job headquarters, tool yards, fabrication facilities, etc., are part of the “site of work” provided they are dedicated *exclusively* or nearly so to the contract/project, and are *adjacent or virtually adjacent* to the site of the work.
 - B. **Established support locations.** Established support locations such as permanent offices, branch plants, fabrication plants, tool yards, etc., of a contractor or subcontractor which locations and continuance in operation are determined wholly without regard to a particular project/contract are *excluded* from the site of work. Also excluded are similar locations of a commercial or material supplier established in the proximity of, but not on, the active site work prior to the opening of bids are excluded from the site of work even if dedicated exclusively to the covered project for a time.
 - C. **Maintenance (MWD) work.** Site of work is generally not subject to interpretation as it pertains to maintenance work (subject to MWD) as such work is designed to sustain physical elements already on-site.
- 11-26 **Start of construction/work.** Start of construction or work, as those terms are used in connection with labor standards/prevaling wage requirements, means the beginning of initial site clearance and/or other preparation provided that those activities are pursued diligently and are followed without appreciated delay by other construction/work activity.
- 11-27 **Statute of limitations.** There is no statute of limitations relative to administrative actions correcting violations of DBRA/MWD labor standards provisions.
- A. **Portal to Portal Act.** The Portal to Portal Act (PA) applies to the Davis-Bacon Act. It prevents the commencement of any court suit for unpaid straight-time wages more than two years after the performance of the work (three years in the case of willful violations), where such actions are judicially determined to be permissible under the law. The PA does not apply to Federally-assisted projects (i.e., the Related Acts) on which DBRA wage rates are required to be paid. State statutes of limitations would apply to such project or projects in private actions where they are judicially determined to be permissible under the law. The Federal six-year statute of limitations would apply in government enforcement actions (28 U.S.C. § 2415(a)).
 - B. **Corrective administrative actions.** Administrative actions to correct violations of the DBRA/MWD, including actions initiated through the Administrative Law Judge hearing procedures, are not subject to time limits.
- 11-28 **Summer youth employment.** Youth (16 to 22 years old) who are bona fide students and part of a bona fide youth opportunity program may be employed on
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DBRA/MWD projects on a temporary basis during the summer months and may be paid less than the applicable prevailing wage rate. Such employment must be in accordance with statutory age and minimum wage requirements. The provisions of the program, including the rates of pay, must be documented in writing. (See also *DOL All Agency Memoranda Nos. 71 and 96.*)

- A. **Bona fide youth opportunity program.** A bona fide youth opportunity program is that which is sponsored by, for example, union and management or a governmental or community group. Sponsorship by an individual employer for only one particular project would not qualify as a bona fide program.
- B. **Supervision.** Competent supervision must be provided to all youth employed on the project. Supervisors must hold journeyman status in their respective trade. The ratio of youth to designated supervisors should be no greater than four to one.
- C. **Reporting.** A copy of the program provisions must be provided to the LRS assigned to the jurisdiction involved, and to the DOL Wage and Hour Administrator.

11-29 **Supply and installation contracts.** Installation work performed in conjunction with an equipment supply contract is subject to DBRA wage requirements where it involves more than an incidental amount of construction activity. Whether installation work involves more than an incidental amount of construction activity depends on the specific circumstances of each particular case. Factors requiring consideration include the nature of the prime contract work; the type of work performed by the employees installing the equipment (e.g., the techniques, materials and equipment used and the skills required for its performance); the extent to which structural modifications to buildings are needed to accommodate the equipment (e.g., widening entrances, relocating walls, installing wiring); the cost of the installation work, either in terms of absolute amount or in relation to the cost of the equipment and the total project cost.

11-30 **Transportation, lodging and board expenses.** An employer that chooses to provide or compensate its employees for transportation, lodging or board expenses may not take credit for such expenses against the applicable DBRA/MWD prevailing wage rates.

11-31 **Truck drivers.** DBRA applicability to truck drivers is based on the definitions of “construction, prosecution, completion, or repair” and “site of work” at 29 CFR §5.2.

- A. **Truck drivers covered by DBRA:**

1. Employees of a contractor or subcontractor for time spent working on the site of the work.
2. Employees of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not *de minimis* (see B(3), below).
3. Drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site.
4. Drivers transporting a portion(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract/project will remain.

B. Truck drivers *not* covered by DBRA:

1. Material delivery truck drivers while off “the site of the work”.
2. Employees of a contractor or subcontractor traveling between a DBRA-covered job site and a commercial supply facility while they are off the “site of the work”.
3. Drivers whose time spent on the site of the work is *de minimis*, such as only a few minutes at a time to merely pick up or drop off materials or supplies.

11-32 **Volunteers.** Bona fide volunteers (defined for HUD programs at 24 CFR Part 70) are excluded from DBRA/MWD coverage. Such volunteers may receive payments for expenses or other nominal benefits or fees without losing “volunteer” status. Such payments, etc., cannot be tied to productivity, hours worked, or in any way be construed as wages. (*See* also 2-8.)

11-33 **Working foremen/supervisors.** Supervisory employees who spend 20% or more of their time performing the work of a laborer or mechanic in a workweek, must be paid no less than the applicable DBRA/MWD rate for the classification of work performed for all hours engaged in such work as a laborer or mechanic.

11-34 **Working subcontractors.** All persons performing the work of a laborer or mechanic, except *bona fide* business owners (described at 11-2), must be paid no less than the applicable DBRA/MWD wage rate for the type of work they perform. (*See* also 11-19, *Payroll certification*, and *Labor Relations Letter LR-96-01*.)

- 11-35 **YouthBuild.** The YouthBuild program is administered by the DOL. The YouthBuild Transfer Act authorizes DOL to provide grants for job training and educational activities for at-risk youths. YouthBuild participants receive a combination of classroom training, job skills development, and on-site training in the construction trades. Although the construction and rehabilitation of affordable housing is a major component of the YouthBuild training program, the main focus is to prepare at-risk youth for employment.

YouthBuild *in itself* is **not** a program under which YouthBuild participants performing construction work on projects covered by Davis-Bacon wage requirements may receive less than the journeyman's wage for the type of work they perform.

National training standards have been approved by DOL for local YouthBuild chapters. Local chapters may adopt these approved standards for their training programs. YouthBuild participants that are registered under such approved standards may be paid less than the journeyman's wage as provided by the standards.

Chapter 12 MONITORING STATE AND LOCAL CONTRACTING AGENCIES

12-1 **Introduction.** This purpose of this Chapter is to establish requirements and methods to be used by Labor Relations Specialists/staff (LRS) to monitor state, local and tribal contracting agencies (LCAs) and assess their capacity and effectiveness in the administration and enforcement of Federal labor standards. In this Chapter, *DOL* shall mean the Department of Labor, *HQLR* shall mean the HUD Headquarters Office of Labor Relations, *RLRO* shall mean the Regional Labor Relations Officer, *LRS* shall mean the HUD Labor Relations Specialist/staff; *LCA* (Local Contracting Agency) shall mean the appropriate staff of the state, local or tribal agency administering the project. All references to LR2000 likewise refer to any successor program/software/system instituted by HUD to manage such activity.

The monitoring conducted by the Office of Labor Relations (OLR) is a critical part of the Department's management control system to ensure that HUD programs are administered in compliance with applicable laws, regulations and other directives. This Chapter is offered to provide tools, techniques, structure and consistency to OLR's monitoring processes.

This Chapter is prepared in three sections: Foundations of Monitoring; Management of Monitoring Activities and Results; and Risk Analysis and Monitoring Review Guides.

Section I – Foundations of Monitoring

12-2 Primary concepts and components.

- A. **Proactive role of the LRS.** The LRS is expected to be proactive in helping LCAs identify and address performance and compliance problems. HUD advocates a cooperative problem-solving approach as the ideal model for enhancing LCA capacity and performance. The emphasis in all monitoring is on prevention, detection and correction of problems and improvement in LCA performance. At the same time, the Department recognizes the need to take strong, decisive measures if an LCA lacks the capacity or fails to implement necessary improvements. Consequently, LRS are expected to assess LCA performance and compliance capacity.
- B. **Risk analysis.** A risk assessment model shall be used to identify the LCAs most in need of attention from OLR. LCAs determined to be of significant concern to OLR shall be the focus of increased oversight and technical assistance. RLROs shall have flexibility in fine-tuning the risk assessment model to reflect unique concerns, local operating conditions and other circumstances pertinent to the LCAs within their jurisdictions.
- C. **On-site reviews.** An on-site review may focus on anticipated problems in any or all functional areas, such as Federal Labor Standards Monitoring, Wage Decision Issuance Process, Training, Maintenance Wage Administration, etc. The LRS is expected to use risk analyses to determine which LCAs will be selected for on-site reviews and the functional areas and activities selected for review. (See 12-8 for more detail on risk analysis.)
- D. **Remote monitoring.** Remote monitoring is an acceptable method by which LRS may monitor LCA performance and compliance. Remote monitoring the same requirements for planning, examination and communication as on-site monitoring. While remote monitoring generally includes access to fewer records than on-site monitoring, remote monitoring may be expanded to include additional records in order to gain sufficient information about LCA operations.
- E. **Cooperative problem solving.** All monitoring will involve a review of the problem area(s), an identification and analysis of the causes of the problems, the development of strategies to implement recommended solutions, and a determination as to the type and extent of assistance to be provided. The LRS is expected to work with the LCA to develop strategies and approaches to resolve problems and enhance the LCA's capacity to successfully administer and enforce Federal labor standards.

F. Referral to HUD program office. The LRS is expected to develop constructive relationships with LCAs. However, the LRS must consider other methods to ensure LCA compliance if the agency repeatedly fails or refuses to make required corrective actions. Sanctions, such as requirements to repay or reprogram funds, limitations on access to funds, etc., may only be applied by the HUD program office. LRS may refer a recommendation of sanction to the appropriate director of the HUD program office with jurisdiction for the LCA *only* after consultation with the RLRO and HQLR.

G. Risk analysis and review guides. HQLR has developed several guides for regional and field office use to carry out various monitoring activities. An inventory of the guides is provided in paragraph 12-32 of this Chapter. All guides are available in both a fillable Word and pdf formats at HUDClips. Detailed instructions for these guides are also available at this site.

12-3 **Applicability and legal authority.** This Handbook applies to the LCAs that administer programs listed in Appendix II-5. The legal authority for the administration and enforcement of labor standards is also listed in Appendix II-5.

12-4 **Compliance with laws and regulations of other agencies.** HUD does not monitor compliance with state, local or tribal laws or regulations, or laws and regulations administered by other Federal agencies. However, if the LRS believes that an LCA is not observing such laws or regulations, the LRS may refer the matter to the RLRO. The RLRO may refer any such issue to the appropriate agency for its attention.

12-5 **OLR management information system.** OLR's management information system must be used to record monitoring actions. Specific data elements are described in the LR2000 Users Guide.

Section II - Management of Monitoring Activities and Results

- 12-6 **Focus of monitoring.** When monitoring an LCA's capacity to administer and enforce labor standards and its execution of those responsibilities, the focus is on the analyses of the LCA's systems and the outcomes of those systems, rather than on re-reviewing the work performed by LCAs. The LRS shall direct his or her efforts to those LCAs determined to be in the greatest need of attention. LCAs expected to have no performance or compliance problems will generally not be monitored on-site.
- 12-7 **Development of annual monitoring strategy.** At the beginning of each fiscal year, the RLRO shall develop a monitoring strategy consistent with HQLR guidance and national operating objectives. The purpose of this strategy is to establish a framework for determining the appropriate level of monitoring attention for each agency consistent with available resources.
- 12-8 **Use of risk analysis.** Risk analysis is the tool OLR uses to establish priorities for monitoring and to determine where resources can be best utilized. Risk analysis is intended to help the LRS identify the LCAs to be monitored, the program areas or activities to be covered, and the depth of the review. The selection process should ensure those LCAs and activities representing the greatest vulnerability to fraud, waste, and mismanagement are monitored within the resources available. In developing an annual monitoring strategy, RLROs shall utilize the basic factors identified at 12-9 of this Chapter, plus any other locally developed indicators approved by HQLR, to complete their ranking system implementing risk analysis. The risk analyses of all LCAs in the jurisdiction shall be completed prior to developing the annual monitoring strategy portion of the Regional Operating Plan containing the proposed schedule of agencies to be monitored. OLR regional and field staff shall use forms HUD-4740-T, *Risk Analysis Table*, and HUD-4740-FS, *Field Office Summary*, to conduct and record risk analyses. Instructions are provided in form HUD-4740-I.
- The risk analysis table(s), summaries of risk analysis scoring, the regional office summary and annual monitoring strategy shall be retained in the respective OLR regional or field office official files for five (5) years following the end of the fiscal year for which the risk analyses, summaries and annual monitoring strategy were prepared.
- 12-9 **Selection of LCAs to be monitored.** Consistent with the Region's operating plan, agencies shall be selected for monitoring within each program and technical area using indicators grouped under five general risk factors: recent monitoring, program complexity, local capacity, HUD program office ratings and recent problems revealed through audits, investigations and/or complaints. The following examples are illustrative of selection criteria for each risk factor:
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A. Recent monitoring.

1. Recurring findings;
2. Inability to clear findings adequately;
3. Need to review actions taken to clear previous findings;
4. Not monitored in past 3-5 years; and/or
5. Issues remaining from previous monitoring.

B. Program complexity.

1. Large grant or loan guarantee amount;
2. Large number of projects;
3. Economic development activities;
4. Projects undertaken by subrecipients and subgrantees;
5. Projects with complicated transactions or involving multiple Federal funding sources or multiple parties;
6. Large amount of multifamily rehabilitation or new construction; and/or
7. Large financial exposure for the Department.

C. Local capacity.

1. Turnover in key staff responsible for labor standards activities;
2. Inexperienced staff;
3. Past difficulty in administering labor standards;
4. Lack of reports or poor quality reports; and/or
5. Substantial increase in volume of covered work with no increase in staff resources.

D. Program office rating.

1. Known/suspected administration of labor standards issues;
2. Contracting/procurement issues affecting the administration of labor standards; and/or
3. Summary rating from program office risk analysis/performance rating system.

E. Recent problems.

1. Inaccurate or incomplete semi-annual or other enforcement reports;
2. Audit findings or failure to provide an audit when required;
3. Investigations or worker/citizen complaints; and/or
4. Failure to meet schedules.

12-10 **Selection of program areas/functions to review.** The LRS shall conduct an analysis to identify the program areas/functions and activities for review and the depth of review. In some cases, factors resulting in selecting an LCA for monitoring might also pinpoint areas for focus in the review. For example, an LCA with recurring monitoring findings in maintenance wage administration should again be reviewed in that area. When staff limitations and/or the size of the LCA's

program(s) preclude monitoring all functions and activities, the LRS should select representative activities or functions. However, the LRS should be mindful to include activities more likely to have issues needing identification for the LCA. LCA performance should be analyzed in sufficient depth to produce a report that is credible and useful to both HUD and the LCA. In the case of LCAs with significant contract activity (e.g., over \$50 million), or agencies with multiple operating divisions administering labor standards requirements, the monitoring may need to be limited to one or two broad functions or operating divisions that can be reviewed in sufficient depth, rather than reviewing more functions/divisions in less detail.

- 12-11 **High risk activities.** Certain types of activities are considered high risk and should be selected as appropriate for monitoring. Examples include:
- A. Economic development projects, particularly those administered by subrecipients or separate divisions/operations of the LCA.
 - B. Construction/rehabilitation activities involving permanent/takeout financing should be reviewed for compliance with the requirements/wage decision in effect at the time the work began.
 - C. Large contracts/purchase orders issued for maintenance and operation of housing developments of Public Housing Agencies (PHAs), Indian Housing Agencies (IHAs), Tribally-Designated Housing Entities (TDHEs) and the Department of Hawaiian Homelands (DHHL).
 - D. Multiple activities operated simultaneously by subrecipients should be reviewed to determine LCA oversight and management as well as subrecipient compliance with applicable laws, rules, handbooks and policies.
 - E. Agencies determined “troubled” by HUD’s Office of Public and Indian Housing (PIH) or equivalent status on an agency by another HUD program office.
 - F. Agencies receiving substantially larger funding and/or new HUD funding sources than current staff may have time or experience to handle.
- 12-12 **Intensity of review.** The depth or thoroughness of the review will be dictated by the degree of involvement of the LCA in high-risk activities, past monitoring history, or past performance. LCAs with large, complicated programs or large numbers of high-risk activities may warrant more in-depth monitoring. LCAs that have not been monitored in-depth recently or whose capacity has been weakened due to staff turnover in key positions may also be candidates for more in-depth reviews. In-depth reviews may require extra time and more detailed review of one or more program areas. These reviews may also require more than one visit to the LCA or set of submissions from the LCA. Where the LRS believes the LCA has corrected past deficiencies, has an acceptable level of performance, or has minor involvement in high risk activities, a less comprehensive review may be appropriate.
- 12-13 **Implementation.** The risk analysis format prescribes a range of numerical scores for high, medium or low risk. RLROs may develop benchmarks for scores as

appropriate within these ranges. For very large LCAs, projects or activities may be individually classified or ranked to more clearly determine areas of focus.

- A. **Use of existing data.** In developing an annual monitoring strategy, the LRS should consider existing reports of LCA activities and funding, together with HUD program office recommendations, when selecting LCAs and their activities to be monitored. Examples of existing reports of data include:
1. Semi-annual Enforcement Reports.
 2. Consolidated Annual Performance Evaluations Reports (CAPERS).
 3. Integrated Disbursement and Information System (IDIS) activity reports.
 4. Annual investment strategies, etc.
 5. FHA multifamily production reports (for risk sharing projects).

Where significant issues have been raised, on-site monitoring should be proposed so that HUD can identify and advise the LCA of problem situations before they develop into more serious issues.

- B. **Focus on high risk areas.** The monitoring review should concentrate on those factors for which the LCA or the activity received its high-risk rating. The quality of monitoring should not be sacrificed in order to monitor greater numbers of LCAs or more program areas/activities.
- C. **Rank order of LCAs.** LCAs shall be ranked by risk score. This ranking and the staff and other resources available will be used to determine which LCAs will be monitored, and the reviews that will be performed on-site versus remotely.
- D. **Documentation.** Regional OLR offices should retain their annual risk analyses documentation and monitoring strategy for five years. These documents are the record of the Region's recommendation of LCA/projects selected for on-site review, remote review, or technical assistance.

12-14 **Timing of monitoring.** To the extent possible, the LRS shall schedule monitoring, especially on-site visits, in consultation with the LCA and seek to minimize disruption in the operations of the LCA. Generally, monitoring should be scheduled either at the same time as program office or other support function (e.g., FHEO, Environment) reviews are being conducted, or at a time well separated from those reviews.

12-15 **Annual monitoring schedule.** As part of the annual monitoring strategy, the RLRO shall prepare and distribute to the offices listed at 12-15(D), a monitoring schedule for the operating plan year. This schedule shall cover all HUD programs based on the criteria for selection of LCAs in this Handbook and other Headquarters guidance. The annual schedule will identify by quarter the LCAs to be monitored,

whether on-site or remotely, for each program office, and the functions/areas to be monitored.

A. Developing a schedule.

1. The monitoring schedule should be viewed in the context of balancing anticipated field office workload and the availability of staff and travel resources. Where possible, travel should serve multiple purposes, i.e., monitoring more than one LCA in the same geographical area on the same trip, provision of technical assistance, etc.
2. OLR staff should not plan on reviewing lower risk projects or functional areas for an LCA except where time remains from a planned visit. Monitoring other than high risk LCAs may be useful in validating risk scoring, as well as identifying risk factors not previously considered.

B. Schedule updates. The annual monitoring schedule should be updated at the beginning of each quarter of the fiscal year. Additional updates should also be made upon issuance of Headquarters guidance requiring an alteration of the schedule or upon changes in field operations policies or conditions.

C. Coordination. The annual monitoring schedule should be coordinated as follows:

1. The LRS is responsible for consulting with appropriate personnel in the field office concerning their monitoring schedules for LCAs and for considering their recommendations for scheduling monitoring; and
2. The LRS should also contact LCAs where reviews by more than one HUD program office or discipline are proposed to determine whether the LCA favors a series of individual reviews or one team review.

D. Distribution of the annual monitoring schedule. Within 30 days following the beginning of the fiscal year, unless Headquarters operating instructions specify otherwise, the RLRO shall communicate the annual schedule of proposed monitoring to the offices listed below:

1. HQLR
2. Regional Administrator.
3. Field Office Director.
4. Regional and field office program directors.

12-16

Pre-monitoring preparation.

- A. **Coordination of monitoring staff.** When more than one person is participating in monitoring an LCA, the areas of responsibility for each participant should be discussed prior to the review to avoid duplication of each other's work and unnecessary use of LCA staff time.
- B. **Review of available data.** The LRS should review data available within HUD office(s) in preparation for the review. The data should be used to evaluate LCA activity and to identify problems or potential problems. The sources listed below are illustrative of information available for in-house review:
1. HUD LCA files, including all correspondence to, from, or concerning the LCA.
 2. The LCA's Grantee Performance Report (GPR) or other periodic reports (including CAPERS, and IDIS reports).
 3. LCA monitoring file including review guides, monitoring reports and letters closing monitoring findings.
 4. Information contained in OLR's management information system (LR2000).
 5. HUD multifamily housing production reports listing projects being administered by local or state agencies, such as Risk-Sharing projects administered by state housing finance agencies.
 6. The LCA's risk assessment, to ensure those factors which elevated the risk standing are included in the monitoring strategy.
- C. **LCA monitoring strategy.** The LRS should develop a monitoring strategy to establish the framework for conducting the review. The strategy should include the following:
1. The monitoring schedule for all LCA functions, areas, and/or operating divisions selected for review and the staff who will be involved.
 2. The issues which will be the focus of monitoring.
 3. The selected activities to be reviewed.
 4. The interview schedule for the LCA.
 5. The schedule of completed work from the review team members.

12-17

Notification of on-site visit. LCAs shall be given adequate notice in advance of an on-site monitoring review. Written notification shall be provided to LCAs at least 14 calendar days prior to the date of the planned on-site monitoring. The LCA shall be advised of the functions, areas and/or operating divisions selected for review, the names of the HUD participants, the dates of the visit, the LCA staff that should be available, the files or information needed for review, and the location(s) at which field work will be performed. The dates/times for meetings and interviews will be coordinated with the LCA prior to any planned visit. For state grantee

reviews that will include on-site reviews of the state's recipients, the notice to the state must be provided sufficiently in advance that the state grantee may provide written notice to its recipient(s) at least 14 calendar days in advance of the on-site review.

- 12-18 **Conducting a monitoring review.** When conducting a monitoring review, the following steps shall be followed: (Additional considerations for remote monitoring and state monitoring reviews follow this paragraph at 12-19 and 12-20, respectively.)
- A. **Entrance conference.** The LRS and any other members of the review team shall conduct an entrance conference with appropriate LCA officials to introduce the review team and explain the review's purpose and schedule. The LRS should indicate the LCA staff, including LCA operating divisions, that should be available for interview and the records that must be made available for review.
 - B. **LCA-generated reports and materials review.** The LRS/review team shall review, as necessary and appropriate, materials generated by the LCA providing detailed information on project descriptions, budget, status, percentage of completion, etc.
 - C. **LCA file review.** The LRS/review team shall review LCA files, including subrecipient files, where appropriate, for required documentation. The LRS will assess the accuracy of information provided to HUD and the level and effectiveness of LCA labor standards compliance activities.
 - D. **Interviews.** The LRS/review team shall interview members of the LCA's staff and, as appropriate, subrecipient staff to discuss the LCA's performance and assess capacity.
 - E. **Site reviews.** It may be necessary for the LRS/review team to visit a sampling of project sites to validate LCA records. Based on the examination of the LCA's files and interviews with LCA staff and subrecipients, the need for visits to other project sites or operational agencies may be indicated.
 - F. **Measure performance.** The LRS/review team should determine whether the individual activities reviewed have been correctly administered based on the review of records, interviews with persons involved in the program and any site visits. The LRS should measure the LCA's performance against Departmental requirements and guidance. When deficiencies are documented, the LRS should assess:
 - 1. The reason for the deficiency;

2. Whether the cause is unique to the individual contract, project or function or whether the problem is systemic; and
3. Any corrective action the LCA is undertaking.

G. Analyze results. The LRS/review team should analyze the monitoring results and pertinent in-house data to detect possible trends and existing or potential problems. The assessment shall include both the results of the review of individual activities and the action(s) the LCA is undertaking to improve performance.

H. Reviewer conclusions. The LRS/review team shall reach conclusions about:

1. The adequacy of the LCA's management system for the administration of labor standards;
2. Whether the program is being administered in compliance with required guidance; and
3. The accuracy of the data in the LCA's reports to HUD, and to DOL (states grantees, only).

I. Exit conference. The LRS shall conduct or participate in an exit conference or other form of consultation with the appropriate agency officials to present preliminary conclusions resulting from the visit and to assure the conclusions are based on accurate information. A record of the exit conference, including attendees, date, time, items covered, preliminary conclusions, any disagreements and required follow-up actions is a required part of the monitoring record for the review.

12-19 **Remote monitoring of LCAs.** Remote monitoring parallels on-site reviews except in this method the LCA submits labor standards administration documents and other information via mail or other delivery method to OLR staff for review and evaluation. In order to spare the LCA the burden and expense of making copies, the LCA will be asked to send the original documents via a shipping method requiring signature on delivery. The LRS is responsible for returning the records to the LCA with signature on delivery. Because OLR does not prescribe a filing system for LCAs, the records submitted by an LCA shall be returned in the same order/structure as received. Generally, remote monitoring will be conducted of less complex agencies or of agencies where the factors contributing to the higher risk score may be evaluated remotely. Remote monitoring may also be performed of higher risk and/or more complex agencies when staffing and travel resources are limited. The various steps for remote monitoring include:

A. Initial contact with LCA. The LRS makes initial telephone contact with LCA to discuss LCA's selection for review and to negotiate the timing of the review (see 12-14). The LRS will discuss with the LCA the activities

subject to prevailing wage requirements, agency structure, and the areas that will be reviewed and the documentation, records and other materials likely to be requested for review. The LRS should advise the LCA that telephonic interviews with staff may be necessary as a part of the review. Also, if the LCA has multiple operating divisions/agencies or functions, the LRS should, as appropriate, cover the same preparatory items with an overarching entity of the LCA or with the separate operating divisions/agencies.

1. In some cases during the initial telephone contact, the LRS and LCA can agree on the projects/contracts that will be reviewed and the information and documents the LCA must submit to the LRS for review. In such cases, the LRS may bypass steps B and C (below) and confirm in writing the agreements reached. The date of this letter constitutes the “Entrance Conference Date” for remote monitoring and beginning HUD Review Date. This document is entered as an incoming request for remote monitoring materials (IRM).

B. Confirmation of documents requested. The LRS shall send to the LCA written confirmation of the initial contact (*aka* initial notification) and of the information requested, which shall include a description of the agency structure and list of personnel and contact information, and a list of current and/or recent activities. Such activities may include contracts (or purchase orders) for maintenance, construction, modernization, emergency work, etc. If telephone contact could not be made, this letter will also describe the remote monitoring process. The list of activities will form the basis for the LRS’s selection of individual projects/contracts to review, and will consist of the following elements:

1. Project name and identifier - the name and project number (if any) agency officials use to refer to the activity.
2. Brief Description – a brief description of the key elements of the work. A description relating to the labor standards-triggering activities is helpful. The LRS may consult with the LCA staff to ensure that the information provided is useful. Examples of preferred descriptions include: “rehabilitation of a 2-story, 16 unit apartment building” or “purchase order for roof repairs at PHA administrative building.
3. Contract/budget amount.

C. Review of LCA information and request for records. The LRS shall review the information submitted by the LCA along with other relevant data and, based on this review, select the operating divisions/agencies or functions, and the activities that will be assessed during the monitoring. The LRS shall transmit a request for records and instructions for submission.

The request shall identify the activities that will be assessed and describe the records that are needed. The request shall instruct the LCA to submit the original records with an inventory of the contents and to send the records via a shipping method that requires signature on delivery. The date of this transmittal constitutes the “Entrance Conference Date” for remote monitoring and beginning HUD Review Date. This document is entered as an incoming request for remote monitoring materials (IRM).

- D. **Confirmation and review of records received.** The LRS shall provide confirmation to the LCA of the records received, noting any requested records that were not included. The LRS shall examine the materials submitted using HUD-4742, Parts A-E, as appropriate. Additional discussions between the LRS and LCA may be necessary to assess staff understanding of labor standards requirements, clarify issues and resolve questions during the review and analysis process. Discoveries from the review of the initial submission may necessitate expanding the scope of the review to validate conclusions.
- E. **Review conclusions.** The LRS shall formulate and document conclusions following the analyses of the submissions and interviews with LCA staff. The conclusions shall address the same elements as those relating to on-site monitoring (see 12-18(H)).
- F. **Exit conference.** The LRS shall conduct an exit conference with the LCA; the exit conference may be accomplished by telephone. A record of the exit conference is required documentation for the monitoring record (see 12-18(I)). The date of the exit conference is the ending HUD review date.
- G. **Monitoring report.** The LRS shall prepare the monitoring report. The requirements for content, consultation, distribution of reports, documentation, records maintenance, and tracking responses to resolution are identical to those for on-site monitoring. When the monitoring report is mailed it is recorded as outgoing correspondence remote monitoring report (ORM) in the OLR management information system.
- H. **Supporting documentation.** The LRS shall make copies of the LCA’s documents, as needed, to support the conclusions/recommendations in the report. If evidence of the same a problem is repeated on multiple documents, the LRS should copy only as many of the documents as needed to support the conclusions and to track any issues to full resolution.
- I. **Return of LCA documents.** The LRS shall return to the LCA, via shipping method that requires signature on delivery, the records submitted by the LCA for the review along with an inventory of the records enclosed. The LCA shall ask the LCA to confirm receipt of the records returned.

12-20 **State program reviews.** The State Community Development Block Grant program and State HOME Investment Partnerships program have many similarities to the corresponding programs administered by units of general local government; however, there are some differences. States monitoring reviews are conducted following the same principles and processes as are applicable to cities, counties, etc., except that:

- A. **State flexibility.** States have a great deal of flexibility in establishing their own procedures and requirements for administering state CDBG funds and providing oversight of its recipients. A finding of noncompliance may be determined based on evidence of failure to comply with a state's own requirements, as well as mandatory HUD/DOL requirements.
- B. **Review of state recipients.** States distribute funds to units of local government (state recipients). Every state program monitoring does not require recipient-level review; but such reviews should be conducted periodically to assess the state's support to, and oversight of, its recipients.
- C. **Disposition of findings at state-recipient level.** Because the principal intent of monitoring state recipients is to measure state performance in training and overseeing their program, problems detected at the state recipient level are presented as problems in state oversight, with corrective actions for the state to improve its systems as well as to address the deficiencies at the recipient level. The LRS may make findings at the recipient level; however, the state will oversee and report on the resolution to HUD.
- D. **Frequency of OLR monitoring of state CDBG grantees.** The HUD Community Planning and Development (CPD) operating divisions prescribe annual on-site monitoring of state grantees by their staff, while OLR's participation is driven by its annual risk assessment and monitoring plan. Generally, OLR's monitoring report of a state program is consolidated into a broader monitoring report sent from either the CPD Director or Field Office Director (see 12-23).
- E. **State CDBG monitoring review guides.** The review guides for the state programs are HUD-4743-A, Part A, *Agency Labor Standards Administration*; HUD-4743-B, Part B, *State Recipient Monitoring*; and HUD-4742-X, *Exit Conference Record*.

12-21 **Evidence and evaluation.** During the monitoring review, information is discovered and gathered. This is considered evidence to support the conclusions contained in the final report.

A. Types of Evidence

1. Physical: direct observation of people, property, or processes – most dependable type of evidence and is essential in determining adequacy of internal controls.
2. Documentary: files, records, etc. – excellent method of verifying reliability of evidence gained through other methods.
3. Testimonial: interviews – considered least dependable – information thus obtained requires corroboration before it can be used in support of a finding.
4. Analytical: developed by making judgments about other forms of evidence through computations, reasoning, comparisons, etc.

B. Standards of evidence. Evidence must meet three standards to support a review conclusion:

1. Sufficient: There must be enough factual and convincing evidence to lead a reasonable person who is not an expert in the program area to the same conclusion as the reviewer. Determining adequacy of evidence requires judgment, especially when there is conflicting evidence. Sufficient evidence is needed to back up the conclusion. Records/staff selected for examination, observation, or interview should be sufficient to give the reviewer reasonable assurance adequate controls are in place.
2. Reliable: The evidence must be reliable and the best obtainable through using reasonable review methods. If there is any reason to question its validity or completeness, additional measures must be taken to ensure the validity of the evidence.
3. Relevant: The evidence must be linked to the monitoring review objectives and have a logical, sensible relationship to the issue being proved or disproved.

C. Evaluation. The evaluation phase of the monitoring review is ongoing from the time information is collected prior to the arrival on-site or the agency's submission of requested records and information, through the examination and exit conference, to the preparation of the monitoring review report. The reviewer makes judgments about all records examined, every interview conducted, and every observation made to determine if a piece of evidence might link or relate to other evidence gathered. The materiality of deficiencies and whether they need to be placed in the official report (rather than handled verbally) is the reviewer's judgment. This should be based on available evidence, extent of the problem, risk to program delivery, and monitoring review objectives. The following points provide some guidance when determining whether deficiencies warrant inclusion in the final report:

1. Importance to the accomplishment of the mission and vital functions of the program;
2. Pervasiveness of the condition (isolated or widespread);
3. Indication of fraud, waste, abuse, or illegal acts;
4. Extent of the deficiency; and
5. Importance to the maintenance of adequate controls, such as a pattern of small, related discrepancies, which by themselves would not warrant mention, but which taken together could be detrimental to the program.

12-22

Monitoring reports. A monitoring report shall be sent to the principal program director who administers HUD funding for the LCA or the executive director of a PHA, IHA or TDHE, with copies to appropriate LCA operating divisions or agencies, reporting the results of the monitoring review. When the labor standards monitoring is conducted in conjunction with a team visit including other support functions and/or the HUD program office monitoring, a single monitoring report should be sent (see 12-22(M)). It is particularly important that all conclusions reached are well supported by facts stated in the report. Staff that concur on monitoring reports should assure all findings have been correctly identified and, as such, are based on applicable law, regulation, handbook or other directive.

A. Timing. Issuance of the report should occur as early as possible, particularly if there are major findings. The monitoring report shall be issued within 30 calendar days of the exit conference.

B. Content of monitoring report. The monitoring report to the LCA must include:

1. The LCA monitored, including PHA number for housing authorities and the grant type of each grant monitored for CPD-funded LCAs;
2. Labor Relations staff who conducted the review;
3. The date(s) of the review;
4. Whether the review was performed on-site or remotely;
5. The scope of monitoring, including the operating divisions, agencies or functional areas, if less than the entire LCA is reviewed (e.g., maintenance wage administration, housing development program, etc., for PHAs), and activity/contract/project records reviewed;
6. Any areas, functions or operating divisions identified in the notification letter that were not reviewed, with a statement explaining the reason(s) these were not covered (e.g., time constraints);
7. Monitoring conclusions for each function/area reviewed and for the LCA's administration of labor standards collectively, supported by the facts considered in reaching the conclusions and limited to the functions/areas reviewed;

8. Specific corrective actions the LCA must take to resolve each finding and/or address each concern and, where appropriate, an indication findings/concerns were resolved during the review;
9. The date by which the correction action(s) must be taken;
10. The opportunity to contest findings; and
11. As appropriate, a statement that technical assistance was provided on-site, or an offer of technical assistance if conditions precluded on-site technical assistance in sufficient depth.

Note: When negative conclusions are identified in a monitoring report, they should be clearly labeled as either a finding or as a concern in accordance with the definitions of these terms provided at 12-22(E) of this Chapter. Also when appropriate and feasible, the findings should be quantified. For example, describe the finding as *“The agency failed to notify ABC Contracting that a comparison of 20 payrolls to the applicable wage decision revealed underpayments to 14 workers totaling \$14,380.00,”* rather than *“a review of payrolls revealed substantial underpayments to workers.”*

- C. **Tone of monitoring report.** Generally, the tone of the monitoring report should be constructive. Deficient performance should be placed in perspective. The disclosure of major findings and concerns should be accompanied with recommendations or offers of technical assistance directed to help correct the deficient performance. It is appropriate to recognize the LCA for making significant improvement in an area of previously identified deficiency.
- D. **Overall assessment of the LCA’s administration of labor standards.** The LRS’s report should conclude whether the LCA’s system and performance, when measured by the functions/areas and information reviewed, are adequate. Further, the LRS may conclude activities are exemplary or exhibit significant improvement or achievement.
- E. **Findings and concerns.** The monitoring report should particularly highlight any findings and concerns likely to result in significant negative consequences if not corrected. It may be appropriate to summarize the major conclusions, both positive and negative, in the body of the transmittal letter, while the details of the review are in the report.
1. **Finding:** A finding is noncompliance with statute, rule, handbook or official directive. Each finding should be clearly titled “Finding,” and include the following information:
 - a. **Condition:** A description of what was wrong or of the problem;
 - b. **Criteria:** The program requirement and citation not met;

- c. Effect: Results or adverse impact(s) of the condition;
 - d. Required corrective action: Addresses the condition and prevents recurrence; and
 - e. Time frame for response: The date by which action is to be completed and reported to OLR.
- 2. **Concern**: A nonconformance with a standard *other* than a statute, rule, handbook or other official directive, or a condition, if not altered, is likely to result in noncompliance with a statute, rule, handbook or other official directive. Each concern should be clearly titled “Concern” and include the condition, cause, effect, and may also include recommended actions.
- F. **Recommended or required corrective actions**. Corrective actions shall be based on sound management principles or other programmatic guidelines. For negative conclusions that are concerns, the LRS should recommend actions and recommend or offer technical assistance. The level of attention given to performance problems should reflect the seriousness of the problem, whether or not corrective action can be required. The monitoring report may include references and an overview of technical assistance provided; however, detailed recapitulation of technical assistance subject matter should be included in a separate transmittal to the LCA.
- G. **Goal of corrective actions**. Corrective actions should be designed to prevent a continuance of the deficiency; mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and prevent a recurrence of the same or a similar deficiency. Whenever possible, the outcome should also result in improving the operational capacity of the LCA. There may be a number of acceptable solutions to resolving a deficiency and the LCA should be allowed to respond to each problem with any reasonable solution of its choice.
- H. **Exemplary practice**. When the LRS observes an especially innovative, outstanding or useful labor standards practice by an LCA that is replicable for other agencies, the recognition of an exemplary practice is appropriate for inclusion in the monitoring report. In addition to including a synopsis of the practice and benefits in the review, LRS shall forward a complete description of the practice through their RLRO to HQLR so that the practices, processes and systems can be distributed as a model for similar organizations.
- I. **Clarity of communication**. The LRS should strive to be clear and concise when communicating monitoring results to ensure that the report will be understandable to the LCA and interested parties beyond the LRS. Citations for findings should be precise, rather than general, with corrective actions

clearly addressing the deficiency and its cause(s). When possible, completion of the corrective actions should enhance the LCA's capacity and prevent recurrence. When the LRS documents several related non-compliances in an LCA's administration of labor standards, often reporting those conditions as a single, consolidated description can focus the LCA on systemic improvements, while addressing the various condition and corrective action components.

- J. Objectivity of report.** The monitoring report should be objective and dispassionate, avoiding subjective statements or conclusions that are not relevant to the scope. The presentation of the conclusions from condition to corrective actions should persuade readers the conclusions are valid and any corrective actions are appropriate. The working papers and materials generated during the on-site visit or remote review should be such that an independent reviewer can adequately assess the quality and accuracy of the monitoring and the evidence supporting the report. The monitoring report and record may be a basis for further action by the Department, if circumstances warrant.
- K. Opportunity to contest findings.** The monitoring report or its transmittal will include the opportunity and instructions for an LCA to appeal HUD's determinations regarding compliance, the proposed corrective actions and/or date(s) for required corrective action(s). The LCA's appeal must include evidence supporting its position, proposed revised corrective action(s) and/or revised corrective action completion date(s). The appeal shall be addressed to the signatory of the transmittal of the monitoring report. If the report contains no negative conclusions, this language is not required.
- L. Consultation prior to issuing report.** Prior to issuing the report to the LCA and reviewers are required to consult with their supervisor, or a designated authority, on the evidence, conclusions and required/recommended actions resulting from the review. The purposes of the consultation are for the supervisor to:
1. Assess the quality and accuracy of the monitoring;
 2. Ensure consistency in handling deficiencies;
 3. Ensure proper detection and correction of deficiencies;
 4. Identify systemic deficiencies; and
 5. Ensure that HUD makes appropriate, supportable judgments and draws sound conclusions.
- M. Distribution of report.** In addition to the principal program director or executive director of the LCA, and operating agencies addressed in the transmittal letter of the report, the LRS (or RLRO) shall provide copies of the monitoring report to the following:

1. The Regional Administrator or Field Office Director within whose operational jurisdiction the LCA is located;
2. The directors of the HUD program office(s) with jurisdiction for the LCA; and
3. The RLRO, if the report is issued at the field office level.

N. **Documentation.** Monitoring activities and results must be well documented. The monitoring report must be supported by any working papers, including the completed review guides used in the monitoring review. All correspondence and working papers relating to the monitoring and conclusions must be in OLR's LCA file. This documentation shall include:

1. Initial notification letter
2. Entrance conference notes, including attendees
3. Completed review guides
4. Review notes
5. Supporting documentation
6. Exit conference notes
7. Monitoring report
8. Records of follow-up actions through close-out, including LCA responses
9. Confirmation of the LCAs receipt of records returned (remote monitoring)

O. **Record retention.** Monitoring records shall be maintained by the office generating the report for a period of five years or for a period to include the records for the most recent and immediate past monitoring reports, if longer retention is necessary to accommodate these two report records.

12-23 **Consolidated monitoring reports.** In situations where the monitoring report is being consolidated into a broader monitoring report with the program office and/or other specialty function, the program office will request the concurrence of the LRS or RLRO who prepared the labor standards portion of the report. The reasons for any non-concurrence shall be discussed with the HUD program office and agreement shall be reached prior to the issuance of the report.

12-24 **Follow-up action.**

A. **Evaluation of LCA response.** When the LCA's response has been received, the LRS shall review the corrective action proposed or taken by the LCA. The LRS review should be completed and a written evaluation communicated to the LCA within 30 calendar days of receipt of the response. If the response satisfies the requirements of the corrective action,

an evaluation letter closing the finding shall be issued. If the review indicates the action was less than satisfactory, an evaluation shall be sent to the LCA specifying additional action(s) needed with an action due date.

- B. **Extension of due date/on-site follow-up.** The action due date(s) may be extended where the LCA demonstrates good faith efforts to resolve the finding. Written confirmation of the extension shall be transmitted to all parties addressed or copied on the original report. A follow-up visit may be necessary to verify corrective action or to provide technical assistance when the LCA has been unable to resolve or correct the finding.
- C. **LCA response overdue.** In the event the LCA fails to meet a target date for corrective action or response, a telephone call is appropriate and shall be documented in the monitoring file. In cases where unforeseen obstacles to complete required actions by the target date warrant extension of that date, written confirmation of the extension shall be transmitted to all parties addressed or copied on the original report.
- D. **LCA response 30 days overdue.** If the LCA has not responded within 30 calendar days after the due date for corrective action, a letter shall be sent to the LCA requesting the status of the corrective action and warning of the possible consequences for failure to comply, as provided under applicable regulations.
- E. **Referral for sanctions.** The LRS, after consultation with the RLRO and HQLR, shall transmit to the appropriate program office director a recommendation to impose sanctions against an LCA that fails to respond to repeated follow-up requests, or repeatedly fails to make the required corrective actions. The recommendation shall be accompanied with copies of all documentation listed at 12-22(N).

12-25 **Closing monitoring findings.** As the LCA completes and reports satisfactory corrective action(s), the LRS shall provide written confirmation of such status to the LCA. The confirmation shall be copied to all parties addressed or copied on the original report.

12-26 **Monitoring activities tracking system.** The Department requires that certain dates and events relating to monitoring activities are recorded and systemically tracked.

- A. **Dates and events to track.**
 - 1. Date of written notification of planned monitoring review
 - 2. Actual date(s) of monitoring review
 - 3. Dates of entrance and exit conferences
 - 4. Date the monitoring report was sent

5. Target dates for resolution of any findings or concerns
6. Date LCA response is received
7. Date of notification of final close-out
8. Date unresolved and/or unaddressed noncompliance findings were referred and to whom
9. Final resolution of any referral

B. Use of OLR management information system. OLR's management information system, LR2000, will be used to the extent possible to record and track the events listed in 12-25(A). More detailed guidance is included in the LR2000 User Guide and its supplements. In addition to serving as a management tool for the OLR regional and field offices, the system serves as the basis for reporting to HQLR.

Section III – Risk Analysis and Monitoring Review Guides

- 12-27 **Risk analysis/LCA monitoring review guides.** Risk analysis and LCA monitoring review guides are designed to provide structure to the assessment and review processes, guide the LRS in collecting and recording data and observations and assist the LRS in evaluating LCA performance. The guides are available in both fillable Word and pdf formats at the OLR Website: www.hud.gov/offices/olr.
- 12-28 **Format of review guides.** The review guides have been designed to elicit "yes" or "no" answers. A "no" answer does not necessarily mean that an LCA has done something wrong, but when the reviewer concludes a requirement has not been met, more descriptive responses and details should be referenced and recorded on supplementary pages. "N/A" should be checked for the questions that do not apply to the function or activity under review. Although this approach may take more time up-front, it will yield higher quality review results providing a more complete representation of the LCA's performance; and provide comprehensive data for the monitoring report, for use in discussions with HUD program office staff and/or OLR managers, as well as for any future LRS assigned to the LCA and for others who have a need to review the LCA's performance.
- 12-29 **Interpretive legend to review standards.** All questions proceeded with an asterisk (*) are not related to requirements imposed by statute, regulation, handbook or other official directive. These are included to assist the reviewer to understand the LCA's program more fully and/or to identify issues that, if not properly addressed, could result in deficient performance. Therefore, negative conclusions to asterisked questions may result in a "concern" being raised but not a "finding".
- 12-30 **Drawing conclusions from data recorded on review guides.**
- A. **Isolated versus systemic problems.** Where no problem, or only minor problems, are found during the review of selected activities falling within a given review area, such as the Wage Decision Issuance, the reviewer can generally conclude each of the LCA's activities falling within that review area is in compliance. Conversely, where a pattern of significant problems is disclosed, it is reasonable to conclude similar problems are likely to exist with other projects or contracts in the same review area. For instance, if each contract prepared by one department of an agency omitted required labor standards provisions, while contracts prepared by other departments did not, the reviewer could conclude the problem is not agency-wide, but a pattern within the one department.
- B. **Expanding the review.** If the slate of selected review activities shows problems within a review area, as time permits, other activities should be spot-checked to determine whether the problem is isolated or systemic
-

within that review area. Also, if during the review, operating divisions/agencies within the LCA that are associated with labor standards administration are newly identified, expanding the review to include the newly-identified operations should be considered. When the original scheduled time for the review does not permit expansion, the LRS may, with the approval of the RLRO and in consultation with the LCA, extend the on-site review period. If the review time cannot be extended, the area with problems should be flagged for a more thorough review during the next monitoring visit and the LCA should be advised of this problem and/or asked to review this area and notify the LRS of its conclusions.

- 12-31 **Regional/local amendments to monitoring review guides.** The RLRO may approve amendments to the review guide areas and elements in order to accommodate special circumstances presented in the organization or operation of an LCA or class of LCAs in its jurisdiction. The RLRO must ensure that any added review items are properly classified as to whether the standard is required by statute, regulation, handbook or other official directive.

- 12-32 **Inventory of risk analysis and review guides.**

A. Risk analysis.

1. HUD-4740-I – Risk Analysis Instructions
2. HUD-4740-T – Risk Analysis Table
3. HUD-4740-FS – Field Office Summary of Risk Analysis Scoring

B. Local agency on-site monitoring.

1. HUD-4741-A – Part A Agency labor standards administration
2. HUD-4741-B – Part B Agency labor standards contract compliance – Davis-Bacon – covered projects
3. HUD-4741-C – Part C Agency maintenance wage rate administration
4. HUD-4741-D – Part D Agency contract labor standards compliance – HUD-determined wage rates
5. HD-4741-E – Part E Agency labor standards compliance – force account work
6. HUD-4741-X – Exit conference

C. State agency on-site monitoring.

1. HUD-4732-A – Part A Agency labor standards administration
2. HUD-4732-B – Part B State agency monitoring
3. HUD-4732-X – Exit conference

D. Remote monitoring.

1. HUD-4742-A – Part A Agency labor standards administration
2. HUD-4742-B – Part B Agency labor standards contract compliance – Davis-Bacon – covered projects

3. HUD-4742-C – Part C Agency maintenance wage rate administration
4. HUD-4742-D – Part D Agency contract labor standards compliance – HUD-determined wage rates
5. HD-4742-E – Part E Agency labor standards compliance – force account work
6. HUD-4742-X – Exit conference

Reorganization Plan #14 of 1950

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 (see 5 U.S.C. 901 et seq.).¹

LABOR STANDARDS ENFORCEMENT

In order to assure coordination of administration and consistency of enforcement of the labor standards provisions of each of the following Acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by these agencies, and cause to be made by the Department of Labor such investigations, with respect to compliance with and enforcement of such labor standards, as he deems desirable, namely:

(a) The Act of March 3, 1931 (46 Stat. 1494, ch. 411), as amended (40 U.S.C. 276a to 276a-6); (b) the Act of June 13, 1934 (48 Stat. 948, ch. 482) (40 U.S.C. 276c); (c) the Act of August 1, 1892 (27 Stat. 340, ch. 352), as amended (40 U.S.C. 321-323); (d) the Act of June 19, 1912 (37 Stat. 137, ch. 174), as amended (40 U.S.C. 324, 325); (e) the Act of June 3, 1939 (53 Stat. 804, ch. 175), as amended (12 U.S.C. 1703, 1708-1711, 1713, 1715c, 1716); (f) the Act of August 13, 1946 (60 Stat. 1040, ch. 958); (g) the Act of May 13, 1946 (60 Stat. 170, ch. 251), as amended; (h) the Airport and Airway Development Act of 1970; and (i) the Act of July 15, 1949 (ch. 338, Public Law 171, Eighty-first Congress, First Session). (As amended Pub. L. 91-258, title I, Sec. 52(b)(7), May 21, 1970, 84 Stat. 235).

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 14 of 1950, prepared in accordance with the provisions of the Reorganization Act of 1949. For the purpose of coordinating the administration of labor standards under various statutes relating to Federal construction and public works or to construction with federally financed assistance or guaranties, the reorganization plan authorizes the Secretary of Labor to prescribe appropriate standards, regulations, and procedures with respect to these matters and to make such investigations concerning compliance with, and enforcement of, labor standards as he deems desirable. The purpose is to assure consistent and effective enforcement of such standards. The plan is in general accord with the recommendations of the Commission on Organization of the Executive Branch of the Government. It constitutes a further step in rebuilding and strengthening the Department of Labor to make it the central agency of the Government for dealing with labor problems.

¹ Effective May 24, 1950, 15 F.R. 3176, 64 STAT. 1267, as amended May 21, 1970, Public Law 91-258, Title I, Sec. 52(B)(7), 84 STAT. 235

After investigation I have found and hereby declare that the reorganization contained in this plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

There are several laws regulating wages and hours of workers employed on Federal contracts for public works or construction. The "eight hour laws" limit the employment of laborers and mechanics on such projects to 8 hours per day and permit their employment in excess of that limit only upon condition that time and one-half the basic-wage rate is paid for the excess hours. The Davis-Bacon Act provides that the minimum rates of pay for laborers and mechanics on certain Federal public-works contracts shall be those prevailing for the corresponding classes of workers in the locality as determined by the Secretary of Labor. The Copeland anti-kick-back law prohibits the exaction of rebates or kick-backs from workers employed on the construction of Federal public works or works financed by the Federal Government and authorizes the Secretary of Labor to make regulations for contractors engaged on such projects.

In addition to the above statutes, there are several Acts which require the payment of prevailing-wage rates, as determined by the Secretary of Labor, to laborers and mechanics employed on construction financed in whole or in part by loans or grants from the Federal Government or by mortgages guaranteed by the Federal Government. These Acts are: the National Housing Act, the Housing Act of 1949, the Federal Airport Act, and the Hospital Survey and Construction Act of 1946.

With the exception of the Department of Labor, the Federal agencies involved in the administration of the various Acts are divided into two classes: (1) agencies which contract for Federal public works or construction; and (2) agencies which lend or grant Federal funds, or Act as guarantors of mortgages, to aid in the construction of projects to be built by State or local public agencies or private individuals and groups. The methods of enforcing labor standards necessarily differ between these two groups of agencies.

The methods adopted by the various agencies for the enforcement of labor standards vary widely in character and effectiveness. As a result, uniformity of enforcement is lacking and the degree of protection afforded workers varies from agency to agency. In order to correct this situation, this plan authorizes the Secretary of Labor to coordinate the administration of legislation relating to wages and hours on federally financed or assisted projects by prescribing standards, regulations, and procedures to govern the enforcement activities of the various Federal agencies and by making such investigations as he deems desirable to assure consistent enforcement. The actual performance of enforcement activities, normally including the investigation of complaints of violations, will remain the duty of the respective agencies awarding the contracts or providing the Federal assistance. Since the principal objective of the plan is more effective enforcement of labor standards, it is not probable that it will result in savings. But it will provide more uniform and more adequate protection for workers through the expenditures made for the enforcement of the existing legislation.

Harry S. Truman
The White House,
March 13, 1950

Delegations of Authority

The following Delegations of Authority were published in the Federal Register on November 21, 2003 (68 FR 65725).

Delegation of Authority to the Director of the Office of Departmental Operations and Coordination

Section A. Authority Delegated

The Secretary delegates to the Director of ODOC all authority with respect to labor standards administration and enforcement vested in, or delegated or assigned to, the Secretary under statutes and other authorities relating to labor standards, including but not limited to the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*), the Copeland Act (40 U.S.C. 3145), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), Reorganization Plan No. 14 of 1950 (5 U.S.C. App. 1 Reorg Plan 14), the National Housing Act (12 U.S.C. 1701 *et seq.*), Section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q), the National Affordable Housing Act (42 U.S.C. 12704 *et seq.*), the United States Housing Act of 1937 (42 U.S.C. 1437j), the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*), the Hawaiian Homelands Homeownership Act of 2000 (25 U.S.C. 4221 *et seq.*), Executive Order 13202 (66 FR 11225), as amended (66 FR 18717), and certain Department of Labor regulations (29 CFR parts 1, 3, 5, 6 and 7.).

Section B. Authority Excepted

The authority delegated to the Director of ODOC does not include the authority to issue or waive regulations or the authority to sue and be sued.

Section C. Authority to Redelegate

The authority delegated herein by the Secretary to the Director of ODOC may be redelegated.

Section D. Authority Revoked

All prior delegations of the authority delegated herein are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Redelegation of Authority to the Director of the Office of Labor Relations

Section A. Redelegation

The Director of ODOC retains and redelegates to the Director of OLR all authority with respect to labor standards and enforcement vested, or delegated or assigned to, the Secretary under statutes

and authorities relating to labor standards, including but not limited to the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*), the Copeland Act (40 U.S.C. 3145), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), Reorganization Plan No. 14 of 1950 (5 U.S.C. App. 1 Reorg Plan 14), the National Housing Act (12 U.S.C. 1701 *et seq.*), Section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q), the National Affordable Housing Act (42 U.S.C. 12704 *et seq.*), the United States Housing Act of 1937 (42 U.S.C. 1437j), the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*), the Hawaiian Homelands Homeownership Act of 2000 (25 U.S.C. 4221 *et seq.*), Executive Order 13202 (66 FR 11225), as amended (66 FR 18717), and certain Department of Labor regulations (29 CFR parts 1, 3, 5, 6 and 7.).

The authority redelegated includes the authority to determine or adopt prevailing wage rates, which is vested in the Secretary by certain statutes, including, but not limited to, the United States Housing Act of 1937 (42 U.S.C. 1437j), the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*), and the Hawaiian Homelands Homeownership Act of 2000 (25 U.S.C. 4221 *et seq.*).

Section B. Authority to Redelegate

The authority redelegated herein may be redelegated by a written redelegation of authority.

Section C. Authority Revoked

All prior redelegations of the authority redelegated herein are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

LABOR RELATIONS CORE WORK ACTIVITIES - DEFINITIONS			
Item	Criteria	Timing	Source Document
A. <u>CPD Programs</u>			400-499 and 500-599 Agency Numbers
1) <u>Monitoring Reviews</u>	<u>Number of monitoring reviews (on-site or remote) completed.</u> NOTE: That both CDBG and HOME projects/contracts must be sampled in review if both programs are administered by the monitored agency. The monitoring report must specify each program and projects reviewed.	<u>Date of report to grantee or to CPD.</u>	<u>Copy of report; entry to LR 2000¹</u> [Outgoing correspondence – “MV” (on-site) and/or “RM” (remote) document type.]
2) <u>Training</u>	<u>Number of formal training sessions conducted.</u> <i>Formal training</i> means scheduled training presented to an audience of not less than 5 LCAs or contractors and/or 10 participants with an agenda, planned curriculum and participant materials. Formal training does <i>not</i> include participation on panels, training provided during monitoring visits or one-on-one training for new client staff. These may be entered as <i>technical assistance</i> (see D.1).	<u>Date of training session.</u>	<u>Copy of attendance list; agenda; LR 2000</u> [Outgoing correspondence – “TR” (training) document type.]

¹ All references to LR2000 likewise include any successor program/software/system instituted by HUD to manage OLR work activity.

Item	Criteria	Timing	Source Document
B. <u>PHA/TDHE Programs</u>			001-399 and 700-799 Agency Numbers
1) <u>Monitoring Reviews</u>	<u>Number of monitoring reviews completed.</u>		<u>Copy of report; LR 2000</u> [Outgoing correspondence – “MV” (on-site) and/or “RM” (remote) document type.]
2) <u>Training</u>	<u>Number of formal training sessions conducted.</u> (See definition, above).	<u>Date of training session.</u>	<u>Copy of attendance list; agenda; LR 2000</u> [Outgoing correspondence – “TR” (training) document type.]
3) <u>Maintenance Wage Determination</u>	<u>Number of annual maintenance wage rate determinations issued.</u>	<u>Date of transmittal to PHA/TDHE.</u>	<u>Copy of transmittal; HUD-52158; LR 2000</u> [Outgoing correspondence – “MW” document type.]
4) <u>Nonroutine Maintenance Wage Determination</u>	<u>Number of annual <i>nonroutine</i> maintenance wage rate determinations issued.</u>	<u>Date of transmittal to PHA/TDHE.</u>	<u>Copy of transmittal; HUD-52160; LR 2000</u> [Outgoing correspondence – “AM” document type.]
C. <u>Housing (HUD-Direct)</u>			600-699 Agency Series
1) <u>Active Projects</u>	<u>Number of projects subject to HUD compliance review (FHA/202/811/§8).</u> [Active when the wage decision is locked in (initial closing or start of construction); remove after final closing clearance (provided no deposit needed). If deposit is needed, remove at final closing.)	<u>Add to active at wage decision lock-in; Remove at final closing clearance/ final closing.</u>	<u>LR 2000</u> Note: Change status flag in LR 2000 from Pending to Active. [FHA Contract Analysis Module, Contract Information Screen, Status Flag.]

Item	Criteria	Timing	Source Document
<u>Pending Projects</u>	<u>Number of projects with Firm Commitment applications (or equivalent) in process.</u> [Pending when Firm Application is received; Convert to <i>Active</i> OR remove after final reject.]	<u>Add to pending at firm application receipt; Convert at wage decision lock-in; Remove at final reject.</u>	<u>LR 2000</u> [FHA Contract Analysis Module, Contract Information Screen, Status Flag.]
2) <u>Initial Closing Clearance</u>	<u>Number of clearances provided for initial endorsements/ closings.</u>	<u>Date of written clearance notice to Legal and/or Office of Housing.</u>	<u>Copy of clearance notice; LR 2000</u> [FHA Contract Analysis Module, Contract Information Screen, 4 th Tab – Contract Data – cont – Initial Closing Clearance Date.]
4) <u>HUD-11 Interviews</u>	<u>Number of HUD-11 on-site interviews conducted by HUD Inspector or Labor Relations staff.</u>	<u>Date HUD-11's received in Labor Relations.</u>	<u>Numerical record of HUD-11's received; LR 2000</u> [Outgoing correspondence – “IN” (HUD-11 Interview Report) document type for agencies in 600-699 range or series, include “No. of Items”.]
5) <u>Project Reviews</u>	<u>Number of spot-check/HUD-11 reviews on project payrolls and other records (to detect violations/falsification).</u>	<u>Date of written documentation (e.g., letter, memo to file, email).</u>	<u>Copy of documentation; LR 2000</u> [Outgoing correspondence PR document type.]

Item	Criteria	Timing	Source Document
6) <u>Final Closing Clearances</u>	<u>Number of clearances provided for final endorsements/ closings.</u>	<u>Date of written notice to Legal and/or Housing for closing clearance/- closing conditions.</u>	<u>Copy of written notice/closing conditions; LR 2000 [FHA Contract Analysis Module, Contract Information Screen, 4th Tab – Contract Data – cont – LR Final Closing Clearance Date.]</u>
7) <u>Deposits Executed</u>	<u>Number of Deposit Agreements executed.</u>	<u>Date of deposit confirmation; agreement execution, or date of entry to LR 2000.</u>	<u>Copy of deposit agreement and schedule; wire transfer receipt; LR 2000 [Deposit Module, Deposits – Deposit Agreement Received Date.]</u> Note: Deposit requirement must be approved by RLRO.
<u>Deposit Amount</u>	<u>Total amount placed on deposit.</u>	<u>Same as above.</u>	<u>Same as above.</u>
8) <u>Vouchers Processed</u>	<u>Number of payment or refund vouchers processed.</u>	<u>Date voucher approved for payment by HQ Labor Relations.</u>	<u>Copy of voucher; LR 2000 [Deposit Module, Vouchers – Date of Disbursement and Amount.]</u>
<u>Voucher Amount</u>	<u>Total amount of vouchers approved for payment.</u>	<u>Same as above.</u>	<u>Same as above.</u>

Item	Criteria	Timing	Source Document
9) <u>Deposit Agreements Cleared</u>	<u>Number of Deposits reaching full disposition; No unresolved or undetermined issues. Amounts remaining for unfound workers ONLY.</u>	<u>Date of final disbursement if zero balance; date of memo to HQLR for unfound workers.</u>	<u>Final Voucher/Memo to HQLR; LR 2000 [FHA Contract Analysis Module, Contract Information Screen, 5th Tab – Deposit Agreements – Deposit Agreement Cleared Date.]</u>
10) <u>Training</u>	<u>Number of formal training sessions conducted. Does not include “optional” Preconstruction Conferences.</u>	<u>Date of training session.</u>	<u>Copy of attendance sheet; agenda; LR 2000 [Outgoing correspondence – “TR” (training) document type.]</u>
D. Other Items (All Programs)			
1) <u>Employment and Training Initiatives</u>	<u>Number (1) of new training/apprenticeship programs established; (2) of expanded training/apprenticeship programs; and/or (3) of training/apprenticeship program assessments.</u>	<u>(1) and (2) Date of approval of new program/ initiative or expansion; (3) date of assessment report.</u>	<u>Copy of approved standards; approval letter; LR 2000 [ETI, Outgoing correspondence – “SE” (special employment) document type, must include agency ID number.]. Note: Narrative report to HQLR required.</u>
2) <u>Restitution Number</u>	<u>Number of workers to whom restitution was made as a result of HUD review or investigation.</u>	<u>Date evidence of employee(s) received restitution is logged to LR 2000; e.g., certified correction payroll reporting payments made by employer.</u>	<u>Copy of certified correction payroll; LR 2000 [Wage Restitution Module – Number of Workers and Restitution Date.]</u>

Item	Criteria	Timing	Source Document
<u>Restitution Amount</u>	<u>Total gross amount of restitution paid to workers. Include DBRA and HUD-determined wages.</u>	<u>Same as above.</u>	<u>Same as above; LR 2000 [Wage Restitution Module – Restitution Amount.]</u>
<u>CWHSSA Restitution</u>	<u>Total gross amount of CWHSSA overtime restitution paid to workers.</u>	<u>Same as above.</u>	<u>Same as above; LR 2000 [Wage Restitution Module – Restitution Date and CWHSSA Amount.]</u>
<u>CWHSSA Liquidated Damages</u>	<u>Total amount of CWHSSA liquidated damages collected.</u>	<u>Date evidence of liquidated damages collection is received/logged to LR 2000.</u>	<u>Same as above; LR 2000 [Wage Restitution Module – Restitution Date and CWHSSA amount.]</u>
3) <u>Investigations Opened</u>	Number of investigations opened by Labor Relations staff involving DBA, DBRA, CWHSSA, or HUD-determined wages. Count by Employer not employee or complainant. NOTE: Project reviews are <i>not</i> investigations. <i>Investigations</i> are concerned with specific allegations of violation, normally involve falsification on the part of the employer to conceal violations and are much more thorough than project reviews. Complaints of a general, non-specific nature do not rise to the level of investigation.	<u>Date of synopsis to HQLR; case number assigned by RLRO.</u>	<u>Copy of synopsis; LR 2000 [Outgoing correspondence – “IV” document type, must include agency ID number. Investigation Module – Date Investigation Opened.] Note: Investigations are opened only by RLRO.</u>

Item	Criteria	Timing	Source Document
<u>Investigations Closed</u>	<u>Number of investigations completed by Labor Relations staff. Count by Employer.</u>	<u>Date of written determination of wages (or no wages) due.</u>	<u>Copy of determination; LR 2000</u> [Investigation Module – Date Investigation Closed.] Note: Enter to LR 2000 wage restitution amounts determined due (if any). Actual wage restitution paid is recorded in Wage Restitution Module.
4) <u>§5.7 Enforcement Reports</u>	<u>Number of §5.7 Enforcement Reports prepared by Labor Relations staff.</u>	<u>Date of report to DOL; if through HQLR, date sent to DOL by HQLR.</u>	<u>Copy of report; LR 2000</u> [Outgoing correspondence – “ER” document type, must include agency ID number.
5) <u>Referrals for hearing and/or debarment.</u>	<u>Number of cases (employers) referred for §5.11 hearing and/or §5.12 debarment.</u>	<u>Date of HQLR transmittal to DOL.</u>	<u>Copy of report; LR 2000</u> [Outgoing correspondence – “HD” (hearing/debarment) document type, must include agency ID number.

HUD Davis-Bacon Related Acts

As discussed in Chapter 2 of this Handbook, the labor standards provisions contained in the HUD Davis-Bacon Related Acts contain language effecting whether and to what extent prevailing wage requirements are applicable. The language of these Acts differs meaning that HUD Labor Relations staff must be familiar with the statutory provision, HUD interpretations of the language and HUD policy concerning applicability developed from those interpretations. The following are excerpts from HUD Related Act labor standards provisions for major programs. A comprehensive listing of covered programs under these Acts, *Davis-Bacon Coverage of Major HUD Programs*, is found in Appendix II-2 to this Handbook. Appendix 2 provides a list of programs under each major program office, the statutory and regulatory references, contract forms, and notes concerning exceptions and/or exclusions to coverage. More detailed explanations of factors of applicability for CDBG, HOME, and Public and Indian/Hawaiian housing are found in Appendix II-5.

A. National Housing Act, (FHA multifamily family insurance)

Statutory Provision: Section 212:

(a) The Secretary shall not insure under section 207 or section 210 of this title, or under section 608 of title VI, pursuant to any application for insurance filed subsequent to the effective date of this section, or under section 213 of this title, or under title VII pursuant to any application filed subsequent to sixty days after the date of the enactment of the Housing Act of 1950, or under section 803 or 810 of title VIII, or under section 908 of title IX, a mortgage or investment which covers property on which there is or is to be located a dwelling or dwellings, or a housing project, the construction of which was or is to be commenced subsequent to such date, unless the principal contractor files a certificate or certificates (at such times, in course of construction or otherwise, as the Secretary may prescribe) certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or the housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), prior to the beginning of construction and after the date of the filing of the application for insurance. The provisions of this section shall also apply to the insurance of any loan or mortgage under section 220 or section 233 which covers property on which there is located a dwelling or dwellings designed principally for residential use for twelve or more families. The provisions of this section shall apply to the insurance under section 221 of any mortgage described in subsection (d)(3) or (d)(4) and (deeming the term “construction” as used in the first sentence of this section to mean rehabilitation) of any mortgage described in subsection (h)(1) or section 235(j)(1) which covers property on which there is located a dwelling or dwellings designed principally for residential use for more than eight families; except that compliance with such provisions may be waived by the Secretary—

- (1) with respect to mortgages described in such subsection (d)(3) or (d)(4) in cases or classes or cases where laborers or mechanics (not otherwise employed at anytime in the construction of the project) voluntarily donate their services without compensation for the purpose of lowering their housing costs in a cooperative undertaking the construction, and
- (2) with respect to mortgages described in such subsection (h)(1) or section 235(j)(1), in cases or classes of cases where prospective owners of such dwellings voluntarily donate their services without compensation, or other persons (not otherwise employed at any time in the rehabilitation of the property) voluntarily donate their services without compensation, and the Secretary determines that any amounts saved thereby are fully credited to the nonprofit organization undertaking the rehabilitation.

The provisions of this section shall also apply to the insurance of any mortgage under section 231, 232, or 236 except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time of the project, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association or other organization undertaking the construction. The provisions of this section shall also apply to the insurance of any mortgage under section 234(d). The provisions of this section shall also apply to the insurance of any mortgage under section 242, except that compliance with such provisions may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the nonprofit corporation, association, or other organization undertaking the construction; and each laborer or mechanic employed on any facility covered by a mortgage insured under section 242 shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be. The provisions of this section all also apply to the insurance of any mortgage under title XI; and each laborer or mechanic employed on any facility covered by a mortgage insured under such title shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be.

(b) The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

(c) There is hereby authorized to be appropriated for the remainder of the fiscal year ending June 30, 1939, and for each fiscal year thereafter, a sum sufficient to meet all necessary expenses of the Department of Labor in making the determines provided for in subsection (a).

Note: There are unit thresholds, overtime requirements (separate from what may be required under FLSA or CWHSSA), and volunteer exemptions contained within this language.

B. Housing Act of 1959, (Section 202 Supportive Housing for the Elderly)

Statutory Provision: Section 202(j)(5):

(A) IN GENERAL.—The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than the rates prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act).

(B) EXEMPTION.—Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii) (I) does not receive compensation for such services; or
(II) is paid expenses, reasonable benefits, or a nominal fee for such services;
and
- (iii) is not otherwise employed at any time in the construction work.

C. Cranston-Gonzalez National Affordable Housing Act (NAHA), (Section 811 Supportive Housing for Persons with Disabilities)

Statutory Provision, Section 811(j)(6):

LABOR STANDARDS.—

(A) IN GENERAL.—The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the construction of housing with 12 or more units assisted under this section shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (commonly known as the Davis-Bacon Act).

(B) EXEMPTION.—Subparagraph (A) shall not apply to any individual who—

- (i) performs services for which the individual volunteered;
- (ii) (I) does not receive compensation for such services; or
(II) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (iii) is not otherwise employed at any time in the construction work.

Note: HUD regulations at 24 CFR §891.155(d) exclude group homes for persons with disabilities from labor standards coverage. Group homes are defined in the statute at Sec. 811(k)(1) as follows:

The term “group home” means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities. The Secretary may waive the project size limitation contained in the previous sentence if the applicant demonstrates that local market conditions dictate the development of a larger project. Not more than 1 home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

D. U.S. Housing Act of 1937 (USHA), (Public Housing, Section 8 Housing)

Statutory Provision, Section 12:

(a) Any contract for loans, contributions, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, and predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Subsection (a) and the provisions relating to wages (pursuant to subsection (a)) in any contract for loan, annual contributions, sale, or lease pursuant to this Act, shall not apply to any individual that—

- (1) performs services for which the individual volunteered;
- (2) (A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services;
and
- (3) is not otherwise employed at any time in the construction work.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation of low-income housing projects. These wage requirements will be discussed in greater detail in Chapter 11 (Reserved).

In addition, note that the Davis-Bacon unit threshold in this provision is relevant only to Section 8 projects, and that there is no requirement that HUD funding is involved in the rehabilitation or construction work.

E. Housing and Community Development Act of 1974 (HCDA), (CDBG, Section 108 Loan Guarantee, EDI/BEDI)

Statutory Provision, Section 110:

(a) All laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5); *Provided*, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

(b) Subsection (a) shall not apply to any individual that—

- (1) performs services for which the individual volunteered;
- (2)(A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and
- (3) is not otherwise employed at any time in the construction work.

Note: See CDBG Factors of Labor Standards Applicability in Appendix II-3.

F. HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act), (HOME)

Statutory Provision, Section 286:

Labor

(a) IN GENERAL.—Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Waiver.—Subsection (a) shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

Note: See HOME Factors of Labor Standards Applicability in Appendix II-3.

G. Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), (IHBG)**Statutory Provision, Section 104(b):**

(1) **In general.** Any contract or agreement for assistance, sale, or lease pursuant to this Act shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal, or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the affordable housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act of March 3, 1931 (commonly known as the Davis-Bacon Act;...); shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.

(2) **Exceptions.** Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this Act, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) **Application of Tribal Laws.** Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian Tribe.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation of affordable housing projects. These wage requirements will be discussed in greater detail in Chapter 11 (Reserved).

H. Housing Assistance for Native Hawaiians (Title VIII of the NAHASDA)**Statutory Provision, Section 805(b):**

(1) IN GENERAL. Any contract or agreement for assistance, sale, or lease pursuant to this title shall contain –

- (A) a provision requiring that an amount not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, technicians employed in the development and all

maintenance, and laborers and mechanics employed in the operation, of the affordable housing project involved (sic);¹ and

- (B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the “Davis-Bacon Act” (46 Stat. 1494; chapter 411; 40 U.S.C. 276a et seq.) shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.

(2) EXCEPTIONS. Paragraph (1) and provisions relating to wages require under paragraph (1) in any contract or agreement for assistance, sale, or lease under this title, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

Note: This provision also imposes requirements to pay HUD-determined (or adopted) wage rates to certain technical workers employed in the development, and to maintenance workers employed in the operation of low-income housing projects. These wage requirements will be discussed in greater detail in Chapter 11 (Reserved).

¹ This paragraph (A) is quoted directly from the language of the statute, as enacted. However, HUD interprets this language to carry the same meaning as that found at Section 104(b)(1).

Davis-Bacon Act/Copeland “Anti-kickback” Act

Title 40, Subtitle II, Part A, Chapter 31:

SUBCHAPTER IV

§ 3141. Definitions

In this subchapter, the following definitions apply:

- (1) **Federal government.**— The term “Federal Government” has the same meaning that the term “United States” had in the Act of March 3, 1931 (ch. 411, [46 Stat. 1494](#) (known as the Davis-Bacon Act)).¹
- (2) **Wages, scale of wages, wage rates, minimum wages, and prevailing wages.**— The terms “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” include—
- (A) the basic hourly rate of pay; and
 - (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of—
 - (i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and
 - (ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

§ 3142. Rate of wages for laborers and mechanics

- (a) **Application.**— The advertised specifications for every contract in excess of \$2,000, to which the Federal Government or the District of Columbia is a party, for construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Government or the District of Columbia that are located in a State or the District of Columbia and which requires or involves the employment of mechanics or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics.

¹ So in original. The period probably should be preceded by an additional closing parenthesis.

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- (b) Based on Prevailing Wage.**— The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.
- (c) Stipulations Required in Contract.**— Every contract based upon the specifications referred to in subsection (a) must contain stipulations that—
- (1)** the contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics;
 - (2)** the contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work; and
 - (3)** there may be withheld from the contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor or subcontractors or their agents.
- (d) Discharge of Obligation.**— The obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, under this subchapter and other laws incorporating this subchapter by reference, may be discharged by making payments in cash, by making contributions described in section [3141 \(2\)\(B\)\(i\)](#) of this title, by assuming an enforceable commitment to bear the costs of a plan or program referred to in section [3141 \(2\)\(B\)\(ii\)](#) of this title, or by any combination of payment, contribution, and assumption, where the aggregate of the payments, contributions, and costs is not less than the basic hourly rate of pay plus the amount referred to in section [3141 \(2\)\(B\)](#).
- (e) Overtime Pay.**— In determining the overtime pay to which a laborer or mechanic is entitled under any federal law, the regular or basic hourly rate of pay (or other alternative rate on which premium rate of overtime compensation is computed) of the laborer or mechanic is deemed to be the rate computed under section [3141 \(2\)\(A\)](#) of this title, except that where the amount of payments, contributions, or costs incurred with respect to the laborer or mechanic exceeds the applicable prevailing wage, the regular or basic hourly rate of pay (or other alternative rate) is the amount of payments, contributions, or costs actually incurred with respect to the laborer or mechanic minus the greater of the amount of contributions or costs of the types described in section [3141](#)
-

(2)(B) of this title actually incurred with respect to the laborer or mechanic or the amount determined under section 3141 (2)(B) but not actually paid.

§ 3143. Termination of work on failure to pay agreed wages

Every contract within the scope of this subchapter shall contain a provision that if the contracting officer finds that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the Federal Government by written notice to the contractor may terminate the contractor's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The Government may have the work completed, by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Government for any excess costs the Government incurs.

§ 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) Payment of Wages.—

- (1) **In general.**— The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.
- (2) **Right of action.**— If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) List of Contractors Violating Contracts.—

- (1) **In general.**— The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.
- (2) **Restriction on awarding contracts.**— No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

§ 3145. Regulations governing contractors and subcontractors (formerly Copeland Act provision)

(a) **In General.**— The Secretary of Labor shall prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government. The regulations shall include a provision that each contractor and subcontractor each week must furnish a statement on the wages paid each employee during the prior week.

(b) **Application.** — Section 1001 of title 18 applies to the statements.

§ 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

§ 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of the subchapter during a national emergency.

§ 3148. Application of this subchapter to certain contracts

This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes ([41 U.S.C. 5](#)), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.

SUBCHAPTER V – VOLUNTEER SERVICES

§ 3161. Purpose

It is the purpose of this subchapter to promote and provide opportunities for individuals who wish to volunteer their services to state or local governments, public agencies, or nonprofit charitable organizations in the construction, repair, or alteration (including painting and decorating) of public buildings and public works that at least partly are financed with federal financial assistance authorized under certain federal programs and that otherwise might not be possible without the use of volunteers.

§ 3162. Waiver for individuals who perform volunteer services

(a) **Criteria for Receiving Waiver.**— The requirement that certain laborers and mechanics be paid in accordance with the wage-setting provisions of subchapter IV of this chapter as set forth in the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450](#) et seq.), the Indian Health Care Improvement Act ([25 U.S.C. 1601](#) et

seq.), and the Housing and Community Development Act of 1974 ([42 U.S.C. 5301](#) et seq.) does not apply to an individual—

- (1) who volunteers to perform a service directly to a state or local government, a public agency, or a public or private nonprofit recipient of federal assistance—
 - (A) for civic, charitable, or humanitarian reasons;
 - (B) only for the personal purpose or pleasure of the individual;
 - (C) without promise, expectation, or receipt of compensation for services rendered, except as provided in subsection (b); and
 - (D) freely and without pressure or coercion, direct or implied, from any employer;
- (2) whose contribution of service is not for the direct or indirect benefit of any contractor otherwise performing or seeking to perform work on the same project for which the individual is volunteering;
- (3) who is not employed by and does not provide services to a contractor or subcontractor at any time on the federally assisted or insured project for which the individual is volunteering; and
- (4) who otherwise is not employed by the same public agency or recipient of federal assistance to perform the same type of services as those for which the individual proposes to volunteer.

(b) Payments.—

- (1) **In accordance with regulations.**— Volunteers described in subsection (a) who are performing services directly to a state or local government or public agency may receive payments of expenses, reasonable benefits, or a nominal fee only in accordance with regulations the Secretary of Labor prescribes. Volunteers who are performing services directly to a public or private nonprofit entity may not receive those payments.
- (2) **Criteria and content of regulations.**— In prescribing the regulations, the Secretary shall consider criteria such as the total amount of payments made (relating to expenses, benefits, or fees) in the context of the economic realities. The regulations shall include provisions that provide that—
 - (A) a payment for an expense may be received by a volunteer for items such as uniform allowances, protective gear and clothing, reimbursement for approximate out-of-pocket expenses, or the cost or expense of meals and transportation;
 - (B) a reasonable benefit may include the inclusion of a volunteer in a group insurance plan (such as a liability, health, life, disability, or worker's compensation plan) or pension plan, or the awarding of a length of service award; and
 - (C) a nominal fee may not be used as a substitute for compensation and may not be connected to productivity.

(3) Nominal fee.— The Secretary shall decide what constitutes a nominal fee for purposes of paragraph (2)(C). The decision shall be based on the context of the economic realities of the situation involved.

(c) Economic Reality.— In determining whether an expense, benefit, or fee described in subsection (b) may be paid to volunteers in the context of the economic realities of the particular situation, the Secretary may not permit any expense, benefit, or fee that has the effect of undermining labor standards by creating downward pressure on prevailing wages in the local construction industry.

Title 18, Part I, Chapter 41:

§ 874. Kickbacks from public works employees

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

Contract Work Hours and Safety Standards Act

Title 40, Subtitle II, Part A, Chapter 37:

§ 3701. Definition and application

(a) **Definition.**— In this chapter, the term “Federal Government” has the same meaning that the term “United States” had in the Contract Work Hours and Safety Standards Act (Public Law 87–581, [76 Stat. 357](#)).

(b) **Application.**—

(1) **Contracts.**— This chapter applies to—

(A) any contract that may require or involve the employment of laborers or mechanics on a public work of the Federal Government, a territory of the United States, or the District of Columbia; and

(B) any other contract that may require or involve the employment of laborers or mechanics if the contract is one—

(i) to which the Government, an agency or instrumentality of the Government, a territory, or the District of Columbia is a party;

(ii) which is made for or on behalf of the Government, an agency or instrumentality, a territory, or the District of Columbia; or

(iii) which is a contract for work financed at least in part by loans or grants from, or loans insured or guaranteed by, the Government or an agency or instrumentality under any federal law providing wage standards for the work.

(2) **Laborers and mechanics.**— This chapter applies to all laborers and mechanics employed by a contractor or subcontractor in the performance of any part of the work under the contract—

(A) including watchmen, guards, and workers performing services in connection with dredging or rock excavation in any river or harbor of the United States, a territory, or the District of Columbia; but

(B) not including an employee employed as a seaman.

(3) **Exceptions.**—

(A) **This chapter.**— This chapter does not apply to—

(i) a contract for—

(I) transportation by land, air, or water;

(II) the transmission of intelligence; or

(III) the purchase of supplies or materials or articles ordinarily available in the open market;

(ii) any work required to be done in accordance with the provisions of the Walsh-Healey Act ([41 U.S.C. 35](#) et seq.); and

(iii) a contract in an amount that is not greater than \$100,000.

(B) **Section 3902 1.**— Section 3902 ^[1] of this title does not apply to work where the assistance described in subsection (a)(2)(C) ^[2] from the Government or an agency or instrumentality is only a loan guarantee or insurance.

[1] So in original. Probably should be “Section 3702”.

[2] So in original. Probably should be “subsection (b)(1)(B)(iii)”.

§ 3702. Work hours

(a) **Standard Workweek.**— The wages of every laborer and mechanic employed by any contractor or subcontractor in the performance of work on a contract described in section [3701](#) of this title shall be computed on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permitted subject to this section. For each workweek in which the laborer or mechanic is so employed, wages include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of 40 hours in the workweek.

(b) **Contract Requirements.**— A contract described in section [3701](#) of this title, and any obligation of the Federal Government, a territory of the United States, or the District of Columbia in connection with that contract, must provide that—

(1) a contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any laborer or mechanic, in any workweek in which the laborer or mechanic is employed on that work, to work more than 40 hours in that workweek, except as provided in this chapter; and

(2) when a violation of clause (1) occurs, the contractor and any subcontractor responsible for the violation are liable—

(A) to the affected employee for the employee’s unpaid wages; and

(B) to the Government, the District of Columbia, or a territory for liquidated damages as provided in the contract.

(c) **Liquidated Damages.**— Liquidated damages under subsection (b)(2)(B) shall be computed for each individual employed as a laborer or mechanic in violation of this chapter and shall be equal to \$10 for each calendar day on which the individual was required or permitted to work in excess of the standard workweek without payment of the overtime wages required by this chapter.

(d) **Amounts Withheld to Satisfy Liabilities.**— Subject to section [3703](#) of this title, the governmental agency for which the contract work is done or which is providing financial assistance for the work may withhold, or have withheld, from money payable because of work performed by a contractor or subcontractor, amounts administratively determined to be necessary to satisfy the liabilities of the contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

§ 3703. Report of violations and withholding of amounts for unpaid wages and liquidated damages

(a) Reports of Inspectors.— An officer or individual designated as an inspector of the work to be performed under a contract described in section [3701](#) of this title, or to aid in the enforcement or fulfillment of the contract, on observation or after investigation immediately shall report to the proper officer of the Federal Government, a territory of the United States, or the District of Columbia all violations of this chapter occurring in the performance of the work, together with the name of each laborer or mechanic who was required or permitted to work in violation of this chapter and the day the violation occurred.

(b) Withholding Amounts.—

(1) Determining amount.— The amount of unpaid wages and liquidated damages owing under this chapter shall be determined administratively.

(2) Amount directed to be withheld.— The officer or individual whose duty it is to approve the payment of money by the Government, territory, or District of Columbia in connection with the performance of the contract work shall direct the amount of—

(A) liquidated damages to be withheld for the use and benefit of the Government, territory, or District; and

(B) unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under this chapter.

(3) Payment.— The Comptroller General shall pay the amount administratively determined to be due directly to the laborers and mechanics from amounts withheld on account of underpayments of wages if the amount withheld is adequate. If the amount withheld is not adequate, the Comptroller General shall pay an equitable proportion of the amount due.

(c) Right of Action and Intervention Against Contractors and Sureties.— If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this chapter, the laborers and mechanics, in the case of a department or agency of the Government, have the same right of action and intervention against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(d) Review Process.—

(1) Time limit for appeal.— Within 60 days after an amount is withheld as liquidated damages, any contractor or subcontractor aggrieved by the withholding may appeal to the head of the agency of the Government or territory for which the contract work is done or which is providing financial assistance for the work, or to the Mayor of the District of Columbia in the case of liquidated damages withheld for the use and benefit of the District.

(2) Review by agency head or mayor.— The agency head or Mayor may review the administrative determination of liquidated damages. The agency head or Mayor may issue a final order affirming the determination or may recommend to the Secretary of Labor that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for the liquidated damages, if it is

found that the amount is incorrect or that the contractor or subcontractor violated this chapter inadvertently, notwithstanding the exercise of due care by the contractor or subcontractor and the agents of the contractor or subcontractor.

(3) Review by secretary.— The Secretary shall review all pertinent facts in the matter and may conduct any investigation the Secretary considers necessary in order to affirm or reject the recommendation. The decision of the Secretary is final.

(4) Judicial action.— A contractor or subcontractor aggrieved by a final order for the withholding of liquidated damages may file a claim in the United States Court of Federal Claims within 60 days after the final order. A final order of the agency head, Mayor, or Secretary is conclusive with respect to findings of fact if supported by substantial evidence.

(e) Applicability of Other Laws.—

(1) Reorganization plan.— Reorganization Plan Numbered 14 of 1950 (eff. May 24, 1950, [64 Stat. 1267](#)) applies to this chapter.

(2) Section 3145.— Section [3145](#) of this title applies to contractors and subcontractors referred to in section [3145](#) who are engaged in the performance of contracts subject to this chapter.

§ 3704. Health and safety standards in building trades and construction industry

(a) Condition of Contracts.—

(1) In general.— Each contract in an amount greater than \$100,000 that is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (eff. May 24, 1950, [64 Stat. 1267](#)) and is for construction, alteration, and repair, including painting and decorating, must provide that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety, as established under construction safety and health standards the Secretary of Labor prescribes by regulation based on proceedings pursuant to section [553](#) of title [5](#), provided that the proceedings include a hearing similar in nature to that authorized by section [553](#).

(2) Consultation.— In formulating standards under this section, the Secretary shall consult with the Advisory Committee created by subsection (d) of this section.

(b) Compliance.—

(1) Actions to gain compliance.— The Secretary may make inspections, hold hearings, issue orders, and make decisions based on findings of fact as the Secretary considers necessary to gain compliance with this section and any health and safety standard the Secretary prescribes under subsection (a). For those purposes the Secretary and the United States district courts have the authority and jurisdiction provided by sections 4 and 5 of the Walsh-Healey Act ([41 U.S.C. 38, 39](#)).

(2) Remedy when noncompliance found.— When the Secretary, after an opportunity for an adjudicatory hearing by the Secretary, establishes noncompliance under this section of any condition of a contract described in—

(A) section [3701 \(b\)\(1\)\(B\)\(i\)](#) or (ii) of this title, the governmental agency for which the contract work is done may cancel the contract and make other contracts for the completion of the contract work, charging any additional cost to the original contractor; or

(B) section [3701 \(b\)\(1\)\(B\)\(iii\)](#) of this title, the governmental agency which is providing the financial guarantee, assistance, or insurance for the contract work may withhold the guarantee, assistance, or insurance attributable to the performance of the contract.

(3) Nonapplicability.— Section [3703](#) of this title does not apply to the enforcement of this section.

(c) Repeated Violations.—

(1) Transmittal of names of repeat violators to comptroller general.— When the Secretary, after an opportunity for an agency hearing, decides on the record that, by repeated willful or grossly negligent violations of this chapter, a contractor or subcontractor has demonstrated that subsection (b) is not effective to protect the safety and health of the employees of the contractor or subcontractor, the Secretary shall make a finding to that effect and, not sooner than 30 days after giving notice of the finding to all interested persons, shall transmit the name of the contractor or subcontractor to the Comptroller General.

(2) Ban on awarding contracts.— The Comptroller General shall distribute each name transmitted under paragraph (1) to all agencies of the Federal Government. Unless the Secretary otherwise recommends, the contractor, subcontractor, or any person in which the contractor or subcontractor has a substantial interest may not be awarded a contract subject to this section until three years have elapsed from the date the name is transmitted to the Comptroller General. The Secretary shall terminate the ban if, before the end of the three-year period, the Secretary, after affording interested persons due notice and an opportunity for a hearing, is satisfied that a contractor or subcontractor whose name was transmitted to the Comptroller General will comply responsibly with the requirements of this section. The Comptroller General shall inform all Government agencies after being informed of the Secretary's action.

(3) Judicial review.— A person aggrieved by the Secretary's action under this subsection or subsection (b) may file with the appropriate United States court of appeals a petition for review of the Secretary's action within 60 days after receiving notice of the Secretary's action. The clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary then shall file with the court the record on which the action is based. The findings of fact by the Secretary, if supported by substantial evidence, are final. The court may enter a decree enforcing, modifying, modifying and enforcing, or setting aside any part of, the order of the Secretary or the appropriate Government agency. The judgment of the court may be reviewed by the Supreme Court as provided in section [1254](#) of title [28](#).

(d) Advisory Committee on Construction Safety and Health.—

(1) Establishment.— There is an Advisory Committee on Construction Safety and Health in the Department of Labor.

(2) Composition.— The Committee is composed of nine members appointed by the Secretary, without regard to chapter [33](#) of title [5](#), as follows:

(A) Three members shall be individuals representative of contractors to whom this section applies.

(B) Three members shall be individuals representative of employees primarily in the building trades and construction industry engaged in carrying out contracts to which this section applies.

(C) Three members shall be public representatives who shall be selected on the basis of their professional and technical competence and experience in the construction health and safety field.

(3) Chairman.— The Secretary shall appoint one member as Chairman.

(4) Duties.— The Committee shall advise the Secretary—

(A) in formulating construction safety and health standards and other regulations; and

(B) on policy matters arising in carrying out this section.

(5) Experts and consultants.— The Secretary may appoint special advisory and technical experts or consultants as may be necessary to carry out the functions of the Committee.

(6) Compensation and expenses.— Committee members are entitled to receive compensation at rates the Secretary fixes, but not more than \$100 a day, including traveltime, when performing Committee business, and expenses under section [5703](#) of title [5](#).

§ 3705. Safety programs

The Secretary of Labor shall—

(1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employment covered by this chapter; and

(2) collect reports and data and consult with and advise employers as to the best means of preventing injuries.

§ 3706. Limitations, variations, tolerances, and exemptions

The Secretary of Labor may provide reasonable limitations to, and may prescribe regulations allowing reasonable variations to, tolerances from, and exemptions from, this chapter that the Secretary may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Federal Government business.

§ 3707. Contractor certification or contract clause in acquisition of commercial items not required

In a contract to acquire a commercial item (as defined in section 4 of the Office of Federal Procurement Policy Act ([41 U.S.C. 403](#))), a certification by a contractor or a contract clause may not be required to implement a prohibition or requirement in this chapter.

§ 3708. Criminal penalties

A contractor or subcontractor having a duty to employ, direct, or control a laborer or mechanic employed in the performance of work contemplated by a contract to which this chapter applies that intentionally violates this chapter shall be fined under title 18, imprisoned for not more than six months, or both.

DOL Regulations, 29 CFR Parts 1, 3, 5, 6 & 7

Part 1: PROCEDURES FOR PREDETERMINATION OF WAGE RATES

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(See on-line or other access for Appendices A and B to Part 1)

Section 1.1 Purpose and scope.

- (a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a--276a-7) and other statutes listed in appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. appendix), except those assigned to the Administrative Review Board (see 29 CFR part 7), have been delegated to the Deputy Under Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.
- (b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.
- (c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

Section 1.2 Definitions.¹

¹ These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

- (a)
 - (1) The prevailing wage shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.
 - (2) In determining the prevailing wages at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in Sec. 1.3 of this part.
- (b) The term area in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.
- (c) The term Administrator shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.
- (d) The term agency shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under title 1 of the State and Local Fiscal Assistance Act of 1972.
- (e) The term *Wage Determinations OnLine (WDOL)* shall mean the Government Internet Web site for both Davis-Bacon Act and Service Contract Act wage determinations available at <http://www.wdol.gov>. In addition, WDOL provides compliance assistance information. The term will also apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

Section 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

- (a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials

and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

- (b) The following types of information may be considered in making wage rate determinations:
- (1) Statements showing wage rates paid on projects. Such statements should include the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.
 - (2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.
 - (3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.
 - (4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.
 - (5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).
 - (6) Any other information pertinent to the determination of prevailing wage rates.
- (c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in Sec. 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of Sec. 1.2(a) of this part.
- (d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the

absence of such data. Data from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

Section 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1671-DOL-AN.

Section 1.5 Procedure for requesting wage determinations.

(a) The Department of Labor publishes general wage determinations under the Davis-Bacon Act on the WDOL Internet Web site. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *Provided*, That questions concerning its use shall be referred to the Department of Labor in accordance with §1.6(b).

(b)

- (1) If a general wage determination is not available, the Federal agency shall request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration,
Wage and Hour Division, Branch of Construction Contract Wage
Determination, Washington, DC 20210.

In preparing Form SF-308, the agency shall check only those classifications that will be needed in the performance of the work. Inserting a note such as “entire schedule” or “all applicable classifications” is not sufficient. Additional classifications needed that are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

- (2) In completing SF-308, the agency shall furnish:
 - (i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

- (ii) The county (or other civil subdivision) and State in which the proposed project is located.
 - (3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.
- (b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may furnish notice of a general wage determination in the Federal Register when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, Provided, That questions concerning its use shall be referred to the Department of Labor in accordance with Sec. 1.6(b). General wage determinations are published in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". (See appendix C for publication details and information on how to obtain general wage determinations.)
- (c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

Section 1.6 Use and effectiveness of wage determinations.

- (a)
- (1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before

award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

- (2) General wage determinations issued pursuant to Sec. 1.5(a), notice of which is published on WDOL, shall contain no expiration date.
- (b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.
- (c)
 - (1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.
 - (2)
 - (i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:
 - (A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a

- reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.
- (B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.
 - (C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.
- (ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).
 - (iii) Actual written notice of a modification shall constitute receipt.
- (3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if notice of such actions is published before contract award (or the start of construction where there is no contract award), except as follows:
- (i) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids, shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if notice of the modification is published after bid opening.
 - (ii) In the case of projects assisted under the National Housing Act, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.
 - (iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

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- (iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published on WDOL prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.
 - (v) A modification to a general wage determination is “published” within the meaning of this section on the date notice of a modification or a supersedeas wage determination is published on WDOL or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. Archived versions of Davis-Bacon and Related Acts wage determinations that are no longer current may be accessed in the “Archived DB WD” database of WDOL for information purposes only. Contracting officers should not use an archived wage determination in a contract action without prior approval of the Department of Labor.
 - (vi) A supersedeas wage determination or a modification to an applicable general wage determination, notice of which is published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.
- (d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.
 - (e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that:
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- (1) There is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that
 - (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Administrative Review Board, shall be effective immediately without regard to paragraph (c) of this section.
- (f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, Provided That the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.
- (g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, Provided, That upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, Provided further That the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

Section 1.7 Scope of consideration.

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- (a) In making a wage determination, the area will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.
 - (b) If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered, Provided That projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.
 - (c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.
 - (d) The use of helpers, apprentices and trainees is permitted in accordance with part 5 of this subtitle.

Section 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

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**Table of Contents****Section**

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Section 3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

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- (a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.
 - (b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.
 - (c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.
 - (d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.
 - (e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.
 - (f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor
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or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

- (g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

Section 3.3 Weekly statement with respect to payment of wages.

- (a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.
- (b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, "Statement of Compliance", or on an identical form on the back of WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.
- (c) The requirements of this section shall not apply to any contract of \$2,000 or less.
- (d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

Section 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

- (a) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each

laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215-0017)

Section 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

- (a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- (b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
- (c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
- (d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met:
 - (1) The deduction is not otherwise prohibited by law;
 - (2) It is either:
 - (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

- (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;
 - (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and
 - (4) The deductions shall serve the convenience and interest of the employee.
- (e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
- (f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- (h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
- (i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
- (j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under Sec. 516.25(a) of this title shall be kept.
- (k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either
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- (1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or
- (2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

Section 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Sec. 3.5. The Secretary may grant permission whenever he finds that:

- (a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;
- (b) The deduction is not otherwise prohibited by law;
- (c) The deduction is either
 - (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or
 - (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and
- (d) The deduction serves the convenience and interest of the employee.

Section 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under Sec. 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

- (a) The application shall be in writing and shall be addressed to the Secretary of Labor.
- (b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of Sec. 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

- (c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Sec. 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.
- (d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.
- (e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

Section 3.8 Action by the Secretary of Labor.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of Sec. 3.6; and shall notify the applicant in writing of his decision.

Section 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under Sec. 3.6 are prohibited.

Section 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Section 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see Sec. 5.5(a) of this subtitle.

Part 5: LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

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Subpart A – Davis-Bacon and Related Act Provisions and Procedures

- (a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:¹
1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
 2. Copeland Act (40 U.S.C. 276c).
 3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
 4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
 5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
 6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
 7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
 8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
 9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
 10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
 11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

¹ Note that citations to the United States Code (USC) in DOL regulations do not reflect the USC sections in the current codification. See Appendices II-1 and II-2 for current USC citations.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).
13. 13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).
27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).
29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).
30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).
32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).
34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).
35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).
36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).
38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).
39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).
40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).
41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).
42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).
43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).
44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).
45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).
46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).
47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).
48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).
49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).
50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).
51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).
52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).
54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).
55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).
56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).
57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). Note.-- Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).
58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).
59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).
60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

- (b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

Section 5.2 Definitions.

- (a) The term Secretary includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.
- (b) The term Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.
- (c) The term Federal agency means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in Sec. 5.1.
- (d) The term Agency Head means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.
- (e) The term Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.
- (f) The term labor standards as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions

of the other statutes listed in Sec. 5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

- (g) The term United States or the District of Columbia means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.
- (h) The term contract means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in Sec. 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.
- (i) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.
- (j) The terms construction, prosecution, completion, or repair mean the following:
 - (1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and

Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

- (i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;
- (ii) Painting and decorating;
- (iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);
- (iv)
 - (A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and
 - (B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.
- (2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not “construction, prosecution, completion, or repair” (see *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.)*, 932 F.2d 985 (D.C. Cir. 1991)).
- (k) The term public building or public work includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.
- (l) The term site of the work is defined as follows:
 - (1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that

- such site is established specifically for the performance of the contract or project;
- (2) Except as provided in paragraph (1)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work as defined in paragraph (1)(1) of this section;
 - (3) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (1)(1) of this section, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.
- (m) The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.
- (n) The terms apprentice, trainee, and helper are defined as follows:
- (1) Apprentice means
 - (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or
 - (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been

- certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (2) Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.
 - (3) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).
 - (4) A distinct classification of “helper” will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:
 - (i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;
 - (ii) The use of such helpers is an established prevailing practice in the area; and
 - (iii) The helper is not employed as a trainee in an informal training program. A “helper” classification will be added to wage determinations pursuant to Sec. 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.
- (o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is employed regardless of any contractual relationship alleged to exist between the contractor and such person.
- (p) The term wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other

similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

- (q) The term wage determination includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of Sec. 1.6 of this title.

Section 5.5 Contract provisions and related matters.

- (c) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

- (1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe

benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic,

including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls

submitted shall set out accurately and completely all of the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and

shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of

the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable

- predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
 - (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
 - (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
 - (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
 - (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
 - (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

- (c) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be

responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

- (c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget.)

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140, 1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140, 1215-0017

Section 5.6 Enforcement.

- (b)
- (1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by Sec. 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in Sec. 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of Sec. 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that

the clauses required by Sec. 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of Sec. 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

- (2) Payrolls and Statements of Compliance submitted pursuant to Sec. 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.
- (3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by Sec. 5.5 and the applicable statutes listed in Sec. 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.
- (4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.
- (5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the

“Freedom of Information Act” (5 U.S.C. 552, see 29 CFR part 70) and the “Privacy Act of 1974” (5 U.S.C. 552a).

- (b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in Sec. 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in Sec. 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total \$1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

Section 5.7 Reports to the Secretary of Labor.

- (a) Enforcement reports.
- (1) Where underpayments by a contractor or subcontractor total less than \$1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as “letters of notice”), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under Sec. 5.8.
 - (2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and

subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

- (b) Semi-annual enforcement reports. To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.
- (c) Additional information. Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.
- (d) Contract termination. Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in Sec. 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

Section 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

- (a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

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- (b) Findings and recommendations of the Agency Head. The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.
- (c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.
- (d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

Section 5.9 Suspension of funds.

- (a) In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in Sec. 5.5 and the applicable statutes listed in Sec. 5.1, the Federal agency, upon its own action or upon written request

of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

Section 5.10 Restitution, criminal action.

- (a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in Sec. 5.5 and the applicable statutes listed in Sec. 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.
- (b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

Section 5.11 Disputes concerning payment of wages.

- (a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to Sec. 5.5(a)(9), or upon request of the contractor or subcontractor(s).
- (b)
 - (1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or Sec. 5.12(a)(1), the letter will so indicate.
 - (2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

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- (3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.
- (c)
- (1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under Sec. 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.
- (2)
- (i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.
- (ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.
- (3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.
- (d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with Sec. 5.12(a)(1). If a timely response or petition
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for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

Section 5.12 Debarment proceedings.

- (a)
 - (1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in Sec. 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in Sec. 5.1.
 - (2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in Sec. 5.1.
- (b)
 - (1) In addition to cases under which debarment action is initiated pursuant to Sec. 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in Sec. 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity

for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in Sec. 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

- (2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.
- (c) Any person or firm debarred under Sec. 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in Sec. 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards

provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in Sec. 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR Part 7.

(d)

- (1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to “any firm, corporation, partnership, or association in which such persons or firms have an interest.” Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in Sec. 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to “any firm, corporation, partnership, or association” in which such contractor or subcontractor has a “substantial interest.” A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.
- (2)
 - (i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).
 - (ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.
 - (iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.
 - (iv)
 - (A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded

- an opportunity to request that a hearing be held to render a decision on the issue.
- (B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.
- (C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).
- (3)
- (i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.
- (ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in Sec. 5.1. No particular form is prescribed for the submission of a request under this section.
- (4) Referral to the Chief Administrative Law Judge. The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.
- (5) Referral to the Administrative Review Board. If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to

render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

Section 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in Sec. 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

Section 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in Sec. 5.1 unless the statute specifically provides such authority.

Section 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

- (a) General. Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.
- (b) Exemptions. Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:
 - (1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the

following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

- (2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.
 - (3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).
- (c) Tolerances.
- (1) The “basic rate of pay” under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.
 - (2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and Sec. 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the “regular rate” under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the “basic rate” under the Contract Work Hours and Safety Standards Act.
 - (3) See Sec. 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.
 - (i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.
 - (ii) The apprentice or trainee comes within the definition contained in Sec. 5.2(n).
 - (iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.
- (d) Variations.

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- (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.
 - (2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than $1\frac{1}{2}$ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.
 - (3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:
 - (i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.
 - (A) The employee receives gross wages of not less than \$300 per week regardless of the total number of hours worked in any workweek, and
 - (B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the
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- contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;
- (ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1215-0140 and 1215-0017. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1215-0017)

Section 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

- (a) Notwithstanding the provisions of Sec. 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of Sec. 5.5(a)(4)(ii)--including those relating to registration of trainees, permissible ratios, and wage rates to be paid--shall apply to these programs.
- (b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to Sec. 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the

classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

- (c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

Section 5.17 Withdrawal of approval of training programs.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Subpart B – Davis-Bacon and Related Act Provisions and Procedures

Section 5.20 Scope and significance of this subpart.

- (a) The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in Sec. 5.12.

Section 5.21 [Reserved.]

Section 5.22 Effect of the Davis-Bacon fringe benefits provisions.

- (a) The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in Sec. 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of Sec. 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms “wages”, “scale of wages”, “wage rates”, “minimum wages” and “prevailing wages”, as used in the Davis-Bacon Act.

Section 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

- (b) As used in this Act the term “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” shall include—
- (1) The basic hourly rate of pay; and
 - (2) The amount of—
 - (A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and
 - (B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits ***.

Section 5.24 The basic hourly rate of pay.

“The basic hourly rate of pay” is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this

portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

Section 5.25 Rate of contribution or cost for fringe benefits.

- (a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.
- (b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See Sec. 5.5(a)(1)(i) and (iii).

Section 5.26 “* * * contribution irrevocably made *** to a trustee or to a third person”.

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The “third person” must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

Section 5.27 “* * * fund, plan, or program”.

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase “fund, plan, or program” is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

Section 5.28 Unfunded plans.

- (a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)
- (b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:
 - (1) It could be reasonably anticipated to provide benefits described in the act;
 - (2) It represents a commitment that can be legally enforced;
 - (3) It is carried out under a financially responsible plan or program; and
 - (4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)
- (c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words “reasonably anticipated” are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be “bona fide” and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by Sec. 5.5(a)(1)(iv).

Section 5.29 Specific fringe benefits.

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- (a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.
 - (b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).
 - (c) The term “other bona fide fringe benefits” is the so-called “open end” provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).
 - (d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be “bona fide” (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is “bona fide” in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under Sec. 5.5(a)(1)(iv).
 - (e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are “bona fide” in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under Sec. 5.5(a)(1)(iv).
 - (f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not
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normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

Section 5.30 Types of wage determinations.

- (a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.
- (b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic Hourly Rate	Fringe benefits payments				
		Health and Welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	\$3.25					
Carpenters	4.00	\$0.15				
Painters	3.90	.15	\$0.10	\$0.20		
Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20		\$0.05	
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

Section 5.31 Meeting wage determination obligations.

- (a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for “bona fide” fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.
- (b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:
 - (1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of Sec. 5.30, the obligations for “painters” will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or
 - (2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for “bona fide” fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for “painters” in the illustration in paragraph (c) of Sec. 5.30 will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributions of not less than a total of 45 cents an hour for “bona fide” fringe benefits; or

- (3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for “painters” in the illustration in paragraph (c) of Sec. 5.30, by paying directly to the painters a straight time hourly rate of not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits); or
- (4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for “painters” may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be \$4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be \$3.75 in cash and 60 cents in payments or costs for fringe benefits.

Section 5.32 Overtime payments.

- (a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.
- (b) The legislative report notes that the phrase “contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program” was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.
- (c)

- (1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics \$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.
- (2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.
- (3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7.

**Part 6: RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS
ENFORCING LABOR STANDARDS IN FEDERAL AND FEDERALLY-
ASSISTED CONSTRUCTION CONTRACTS AND FEDERAL SERVICE
CONTRACTS**

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Subpart A – General**Section 6.1 Applicability of rules.**

This part provides the rules of practice for administrative proceedings under the Service Contract Act, the Davis-Bacon Act and related statutes listed in Sec. 5.1 of part 5 of this title which require payment of wages determined in accordance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act. See parts 4 and 5 of this title.

Section 6.2 Definitions.

- (a) Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.
- (b) Associate Solicitor means the Associate Solicitor for Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.
- (c) Chief Administrative Law Judge means the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington DC 20001-8002.
- (d) Respondent means the contractor, subcontractor, person alleged to be responsible under the contract or subcontract, and/or any firm, corporation, partnership, or

association in which such person or firm is alleged to have a substantial interest (or interest, if the proceeding is under the Davis-Bacon Act) against whom the proceedings are brought.

Section 6.3 Service; copies of documents and pleadings.

- (a) Manner of service. Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. When a party is represented by an attorney, the service should be upon the attorney.
- (b) Proof of service. A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service. Where service is made by mail, service shall be complete upon mailing. However, documents are not deemed filed until received by the Chief Clerk at the Office of Administrative Law Judges and where documents are filed by mail 5 days shall be added to the prescribed period.
- (c) Service upon Department, number of copies of pleading or other documents. An original and three copies of all pleadings and other documents shall be filed with the Department of Labor: The original and one copy with the Administrative Law Judge before whom the case is pending, one copy with the attorney representing the Department during the hearing, and one copy with the Associate Solicitor.

Section 6.4 Subpoenas (Service Contract Act).

All applications under the Service Contract Act for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the Administrative Law Judge. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced.

Section 6.5 Production of documents and witnesses.

The parties, who shall be deemed to be the Department of Labor and the respondent(s), may serve on any other party a request to produce documents or witnesses in the control of the party served, setting forth with particularity the documents or witnesses requested. The party served shall have 15 days to respond or object thereto unless a shorter or longer time is ordered by the Administrative Law Judge. The parties shall produce documents and witnesses to which no privilege attaches which are in the control of the party, if so ordered by the Administrative Law Judge upon motion therefor by a party. If a privilege is claimed, it must be specifically claimed in writing prior to the hearing or orally at the hearing or deposition, including the reasons therefor. In no event shall a statement taken in confidence by the Department of Labor or other Federal agency be ordered to be produced prior to the date of testimony at trial of the person whose statement is at issue unless the consent of such person has been obtained.

Section 6.6 Administrative Law Judge.

- (a) Equal Access to Justice Act. Proceedings under this part are not subject to the provisions of the Equal Access to Justice Act (Pub. L. 96-481). In any hearing conducted pursuant to the provisions of this part 6, Administrative Law Judges shall have no power or authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.
- (b) Contumacious conduct: failure or refusal of a witness to appear or answer. Contumacious conduct at any hearing before an Administrative Law Judge shall be ground for exclusion from the hearing. In cases arising under the Service Contract Act, the failure or refusal of a witness to appear at any hearing or at a deposition when so ordered by the Administrative Law Judge, or to answer any question which has been ruled to be proper, shall be ground for the action provided in section 5 of the Act of June 30, 1936 (41 U.S.C. 39) and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

Section 6.7 Appearances.

- (a) Representation. The parties may appear in person, by counsel, or otherwise.
- (b) Failure to appear. In the event that a party appears at the hearing and no party appears for the opposing side, the presiding Administrative Law Judge is authorized, if such party fails to show good cause for such failure to appear, to dismiss the case or to find the facts as alleged in the complaint and to enter a default judgment containing such findings, conclusions and order as are appropriate. Only where a petition for review of such default judgment cites alleged procedural irregularities in the proceeding below and not the merits of the case shall a non-appearing party be permitted to file such a petition for review. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

Section 6.8 Transmission of record.

If a petition for review of the Administrative Law Judge's decision is filed with the Administrative Review Board, the Chief Administrative Law Judge shall promptly transmit the record of the proceeding.

If a petition for review is not filed within the time prescribed in this part, the Chief Administrative Law Judge shall so advise the Administrator.

Subpart B – Enforcement Proceedings Under the Service Contract Act (and Under the Contract Work Hours and Safety Standards Act)

Section 6.15 Complaints.

- (a) Enforcement proceedings under the Service Contract Act and under the Contract Work Hours and Safety Standards Act for contracts subject to the Service Contract Act, may be

instituted by the Associate Solicitor for Fair Labor Standards or a Regional Solicitor by issuing a complaint and causing the complaint to be served upon the respondent.

- (b) The complaint shall contain a clear and concise factual statement of the grounds for relief and the relief requested.
- (c) The Administrative Law Judge shall notify the parties of the time and place for a hearing.

Section 6.16 Answers.

- (a) Within 30 days after the service of the complaint the respondent shall file an answer with the Chief Administrative Law Judge. The answer shall be signed by the respondent or his/her attorney.
- (b) The answer shall
 - (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or
 - (2) state that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.
- (c) Failure to file an answer shall constitute grounds for waiver of hearing and entry of a default judgment unless respondent shows good cause for such failure to file. In preparing the decision of default judgment the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint and shall order the appropriate relief and/or sanctions.

Section 6.17 Amendments to pleadings.

At any time prior to the close of the hearing record, the complaint or answer may be amended with the permission of the Administrative Law Judge and on such terms as he/she may approve. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the data of the pleadings and which are relevant to any of the issues involved.

Section 6.18 Consent findings and order.

- (a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the processings in whole or in part.
- (b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:
 - (1) That the order shall have the same force and effect as an order made after full hearing;
 - (2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;
 - (3) A waiver of any further procedural steps before the Administrative Law Judge and Administrative Review Board regarding those matters which are the subject of the agreement; and
 - (4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.
- (c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

Section 6.19 Decision of the Administrative Law Judge.

- (a) Proposed findings of fact, conclusions, and order. Within 20 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow each party may file with the Administrative Law Judge proposed findings of fact, conclusion of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.
- (b) Decision of the Administrative Law Judge.
 - (1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in Sec. 6.20 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. The decision of the Administrative Law Judge

shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made under Secs. 6.16, 6.17 and 6.18 of this title. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations and rulings contained in parts 4 and 5 and other pertinent parts of this title.

- (2) If the respondent is found to have violated the Service Contract Act, the Administrative Law Judge shall include in his/her decision an order as to whether the respondent is to be relieved from the ineligible list as provided in section 5(a) of the Act, and, if relief is ordered, findings of the unusual circumstance, within the meaning of section 5(a) of the Act, which are the basis therefor. If respondent is found to have violated the provisions of the Contract Work Hours and Safety Standards Act, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in Sec. 5.12(a)(1) of part 4 of this title, including findings regarding the existence of aggravated or willful violations. If wages and/or fringe benefits are found due under the Service Contract Act and/or the Contract Work Safety Standards Act and are unpaid, no relief from the ineligible list shall be ordered except on condition that such wages and/or fringe benefits are paid.
- (3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

Section 6.20 Petition for review.

Within 40 days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board pursuant to 29 CFR part 8, with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on the ineligibility list shall also state the unusual circumstances or lack thereof under the Service Contract Act, and/or the aggravated or willful violations of the Contract Work Hours and Safety Standards Act or lack thereof, as appropriate.

Section 6.21 Ineligible list.

- (a) Upon the final decision of the Administrative Law Judge or Administrative Review Board, as appropriate, the Administrator shall within 90 days forward to the Comptroller General the name of any respondent found in violation of the Service Contract Act, including the name of any firm, corporation, partnership, or

association in which the respondent has a substantial interest, unless such decision orders relief from the ineligible list because of unusual circumstances.

- (b) Upon the final decision of the Administrative Law Judge or the Administrative Review Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to be in aggravated or willful violation of the Contract Work Hours and Safety Standards Act, and the name of any firm, corporation, partnership, or association in which the respondent has a substantial interest.

Subpart C – Enforcement Proceedings Under the Davis-Bacon Act and Related Prevailing Wage Statutes, the Copeland Act, and the Contractor Work Hours and Safety Standards Act (Except Under Contracts Subject to the Service Contract Act)

Section 6.30 Referral to Chief Administrative Law Judge.

- (a) Upon timely receipt of a request for a hearing under Sec. 5.11 (where the Administrator has determined that relevant facts are in dispute) or Sec. 5.12 of part 5 of this title, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the notification letter to the respondent from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent.
- (b) The notification letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings. The notification letter and response shall be in accordance with the provisions of Sec. 5.11 or Sec. 5.12(b)(1) of part 5 of this title, as appropriate.

Section 6.31 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (notification letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to Sec. 5.11 of part 5 of this title, such an amendment may include a statement that debarment action is warranted under Sec. 5.12(a)(1) of part 5 of this title or under section 3(a) of the Davis-Bacon Act. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon

such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

Section 6.32 Consent findings and order.

- (a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.
- (b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:
 - (1) That the order shall have the same force and effect as an order made after full hearing;
 - (2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;
 - (3) That any order concerning debarment under the Davis-Bacon Act (but not under any of the other statutes listed in Sec. 5.1 of part 5 of this title) shall constitute a recommendation to the Comptroller General;
 - (4) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of the agreement; and
 - (5) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.
- (c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

Section 6.33 Decision of the Administrative Law Judge.

- (a) Proposed findings of fact, conclusions, and order. Within 20 days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.
- (b) Decision of the Administrative Law Judge.

- (1) Within a reasonable time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision, a petition for review thereof shall be filed as provided in Sec. 6.34 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board either declines to review the decision or issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in part 5 and other pertinent parts of this title. The decision of the administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondent's answer (response) and Sec. 6.32 of this title. It shall be supported by reliable and probative evidence.
- (2) If the respondent is found to have violated the labor standards provisions of any of the statutes listed in Sec. 5.1 of part 5 of this title other than the Davis-Bacon Act, and if debarment action was requested pursuant to the complaint (notification letter) or any amendment thereto, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list as provided in Sec. 5.12(a)(1) of this title, including any findings of aggravated or willful violations. If the respondent is found to have violated the Davis-Bacon Act, and if debarment action was requested, the Administrative Law Judge shall issue as a part of the order a recommendation as to whether respondent should be subject to the ineligible list pursuant to section 3(a) of the Act, including any findings regarding respondent's disregard of obligations to employees and subcontractors. If wages are found due and are unpaid, no relief from the ineligible list shall be ordered or recommended except on condition that such wages are paid.
- (3) The Administrative Law Judge shall make no findings regarding liquidated damages under the Contract Work Hours and Safety Standards Act.

Section 6.34 Petition for review.

Within 40 days after the date of the decision of the Administrative Law judge (or such additional time as is granted by the Administrative Review Board). any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board, pursuant to part 7 of this title, with a copy thereof to the Chief Administrative Law judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the aggravated or willful violations and/or disregard of obligations to employees and subcontractors, or lack thereof, as appropriate.

Section 6.35 Ineligible list.

Upon the final decision of the Administrative Law Judge or Administrative Review Board, as appropriate, regarding violations of any statute listed in Sec. 5.1 of part 5 of this title other than the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General the name of any respondent found to have committed aggravated or willful violations of the labor standards provisions of such statute, and the name of any firm, corporation, partnership, or association in which such respondent has a substantial interest. Upon the final decision of the Administrative Law Judge or Administrative Review Board, as appropriate, regarding violations of the Davis-Bacon Act, the Administrator promptly shall forward to the Comptroller General any recommendation regarding debarment action against a respondent, and the name of any firm, corporation, partnership, or association in which such respondent has an interest.

Subpart D – Substantial Interest Proceedings

Section 6.40 Scope.

This subpart supplements the procedures contained in Sec. 4.12 of part 4 and Sec. 5.12(d) of part 5 of this title, and states the rules of practice applicable to hearings to determine whether persons or firms whose names appear on the ineligible list pursuant to section 5(a) of the Service Contract Act or Sec. 5.12(a)(1) of part 5 of this title have a substantial interest in any firm, corporation, partnership, or association other than those listed on the ineligible list; and/or to determine whether persons or firms whose names appear on the ineligible list pursuant to section 3(a) of the Davis-Bacon Act have an interest in any firm, corporation, partnership, or association other than those listed on the ineligible list.

Section 6.41 Referral to Chief Administrative Law Judge.

- (a) Upon timely receipt of a request for a hearing under Sec. 4.12 of part 4 or Sec. 5.12 of part 5 of this title, where the Administrator has determined that relevant facts are in dispute, or on his/her own motion, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of any findings of the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the person or firm requesting the hearing, if any and upon the respondents.
- (b) The findings of the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

Section 6.42 Amendments to pleadings.

At any time prior to the closing of the hearing record, the complaint (Administrator's findings) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. Such amendments shall be allowed when

justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

Section 6.43 Consent findings and order.

- (a) At any time prior to the receipt of evidence or, at the discretion of the Administrative Law Judge, prior to the issuance of the decision of the Administrative Law Judge, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.
- (b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall provide:
 - (1) That the order shall have the same force and effect as an order made after full hearing;
 - (2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;
 - (3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board, as appropriate, regarding those matters which are the subject of the agreement; and
 - (4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.
- (c) Within 30 days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall accept such agreement by issuing a decision based upon the agreed findings and order. If a such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

Section 6.44 Decision of the Administrative Law Judge.

- (a) Proposed findings of fact, conclusions, and order. Within 30 days of filing of the transcript of the testimony, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.
- (b) Decision of the Administrative Law Judge. Within 60 days after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 days after receipt

of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall make his/her decision. If any aggrieved party desires review of the decision a petition for review thereof shall be filed as provided in Sec. 6.45 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. The decision of the Administrative Law Judge shall include findings of fact and conclusions of law, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record. Such decision shall be in accordance with the regulations and rulings contained in parts 4 and 5 and other pertinent parts of this title. The decision of the Administrative Law Judge shall be based upon a consideration of the whole record, including any admissions made in the respondents' answer (response) and Sec. 6.43 of this title.

Section 6.45 Petition for review.

Within 30 days after the date of the decision of the Administrative Law Judge, any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board pursuant to 29 CFR part 8 if the proceeding was under the Service Contract Act, or to the Administrative Review Board pursuant to 29 CFR part 7 if the proceeding was under Sec. 5.12(a)(1) of part 5 of this title or under section 3(a) of the Davis-Bacon Act, with a copy thereof to the Chief Administrative Law Judge. The petition for review shall refer to the specific findings of fact, conclusions of law, or order at issue.

Section 6.46 Ineligible list.

Upon the final decision of the Administrative Law Judge, Administrative Review Board, as appropriate, the Administrator promptly shall forward to the Comptroller General the names of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to section 5(a) of the Service Contract Act or Sec. 5.12(a) of part 5 of this title has a substantial interest; and/or the name of any firm, corporation, partnership, or association in which a person or firm debarred pursuant to section 3(a) of the Davis-Bacon Act has an interest.

Subpart E – Substantial Variance and Arm's Length Proceedings

Section 6.50 Scope.

This subpart supplements the procedures contained in Secs. 4.10 and 4.11 of part 4 of this title and states the rules of practice applicable to hearings under section 4(c) of the Act to determine whether the collectively bargained wages and/or fringe benefits otherwise required to be paid under that section and sections 2(a)(1) and (2) of the Act are substantially at variance with those which prevail for services of a character similar in the locality, and/or to determine whether the wages and/or fringe benefits provided in the collective bargaining agreement were reached as a result of arm's-length negotiations.

Section 6.51 Referral to Chief Administrative Law Judge.

- (a) Referral pursuant to Sec. 4.10 or Sec. 4.11 of part 4 of this title will be by an Order of Reference from the Administrator to the Chief Administrative Law Judge, to which will be attached the material submitted by the applicant or any other material the Administrator considers relevant and, for proceedings pursuant to Sec. 4.11 of this title, a copy of any findings of the Administrator. A copy of the Order of Reference and all attachments will be sent by mail to the following parties: The agency whose contract is involved, the parties to the collective bargaining agreement, any contractor or subcontractor performing on the contract, any contractor or subcontractor known to be desirous of bidding thereon or performing services thereunder who is known or believed to be interested in the determination of the issue, any unions or other authorized representatives of service employees employed or who may be expected to be employed by such contractor or subcontractor on the contract work, and any other affected parties known to be interested in the determination of the issue. The Order of Reference will have attached a certificate of service naming all interested parties who have been served.
- (b) Accompanying the Order of Reference and attachments will be a notice advising that any interested party, including the applicant, who intends to participate in the proceeding shall submit a written response to the Chief Administrative Law Judge within 20 days of the date on which the certificate of service indicates the Order of Reference was mailed. The notice will state that such a response shall include:
 - (1) A statement of the interested party's case;
 - (2) A list of witnesses the interested party will present, a summary of the testimony each is expected to give, and copies of all exhibits proposed to be proffered;
 - (3) A list of persons who have knowledge of the facts for whom the interested party requests that subpoenas be issued and a brief statement of the purpose of their testimony; and
 - (4) A certificate of service in accordance with Sec. 6.3 of this title on all interested parties, including the Administrator.

Section 6.52 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, notice to the parties, attachments and certificate of service, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall promptly notify all interested parties of the time and place of a prehearing conference and of the hearing which shall be held immediately upon the completion of prehearing conference. The date of the prehearing conference and hearing shall be not more than 60 days from the date on which the certificate of service indicates the Order of Reference was mailed.

Section 6.53 Prehearing conference.

- (a) At the prehearing conference the Administrative Law Judge shall attempt to determine the exact areas of agreement and disagreement raised by the Administrator's Order of

Reference and replies thereto, so that the evidence and arguments presented at the hearing will be relevant, complete, and as brief and concise as possible.

- (b) Any interested party desiring to file proposed findings of fact and conclusions of law shall submit them to the Administrative Law Judge at the prehearing conference.
- (c) If the parties agree that no hearing is necessary to supplement the written evidence and the views and arguments that have been presented, the Administrative Law Judge shall forthwith render his/her final decision. The Administrative Law Judge with the agreement of the parties may permit submission of additional written evidence or argument, such as data accompanied by affidavits attesting to its validity or depositions, within ten days of commencement of the prehearing conference.

Section 6.54 Hearing.

- (a) Except as provided in Sec. 6.53(c) of this title, the hearing shall commence immediately upon the close of the prehearing conference. All matters remaining in controversy, including the presentation of additional evidence, shall be considered at the hearing. There shall be a minimum of formality in the proceeding consistent with orderly procedure.
- (b) To expedite the proceeding the Administrative Law Judge shall, after consultation with the parties, set reasonable guidelines and limitations for the presentations to be made at the hearing. The Administrative Law Judge may limit cross-examination and may question witnesses.
- (c) Under no circumstances shall source data obtained by the Bureau of Labor Statistics, U.S. Department of Labor, or the names of establishments contacted by the Bureau be submitted into evidence or otherwise disclosed. Where the Bureau has conducted a survey, the published summary of the data may be submitted into evidence.
- (d) Affidavits or depositions may be admitted at the discretion of the Administrative Law Judge. The Administrative Law Judge may also require that unduly repetitious testimony be submitted as affidavits. Such affidavits shall be submitted within three days of the conclusions of the hearing.
- (e) Counsel for the Administrator shall participate in the proceeding to the degree he/she deems appropriate.
- (f) An expedited transcript shall be made of the hearing and of the prehearing conference.

Section 6.55 Closing of record.

The Administrative Law Judge shall close the record promptly and not later than 10 days after the date of commencement of the prehearing conference. Post-hearing briefs may be

permitted, but the filing of briefs shall not delay issuance of the decision of the Administrative Law Judge pursuant to Sec. 6.56 of this title.

Section 6.56 Decision of the Administrative Law Judge.

Within 15 days of receipt of the transcript, the Administrative Law Judge shall render his/her decision containing findings of fact and conclusions of law. The decision of the Administrative Law Judge shall be based upon consideration of the whole record, and shall be in accordance with the regulations and rulings contained in part 4 and other pertinent parts of this title. If any party desires review of the decision, a petition for review thereof shall be filed as provided in Sec. 6.57 of this title, and such decision and order shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision. If a petition has not been filed within 10 days of issuance of the Administrative Law Judge's decision, the Administrator shall promptly issue any wage determination which may be required as a result of the decision.

Section 6.57 Petition for review.

Within 10 days after the date of the decision of the Administrative Law Judge, any interested party who participated in the proceedings before the Administrative Law Judge and desires review of the decision shall file a petition for review by the Administrative Review Board pursuant to 29 CFR part 8. The petition shall refer to the specific findings of fact, conclusions of law, or order excepted to and the specific pages of transcript relevant to the petition for review.

Part 7: PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**Table of Contents****Subpart A – Purpose and Scope**

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Subpart A – Purpose and Scope**Section 7.1 Purpose and scope.**

- (a) This part contains the rules of practice of the Administrative Review Board when it is exercising its jurisdiction described in paragraph (b) of this section.

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- (b) The Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from final decisions under parts 1, 3, and 5 of this subtitle including decisions as to the following:
- (1) Wage determinations issued under the Davis-Bacon Act and its related minimum wage statutes;
 - (2) debarment cases arising under part 5 of this subtitle;
 - (3) controversies concerning the payment of prevailing wage rates or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations; and
 - (4) recommendations of a Federal agency for appropriate adjustment of liquidated damages which are assessed under the Contract Work Hours and Safety Standards Act.
- (c) In exercising its discretion to hear and decide appeals, the Board shall consider, among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or the public interest.
- (d) In considering the matters within the scope of its jurisdiction the Board shall act as the authorized representative of the Secretary of Labor. The Board shall act as fully and finally as might the Secretary of Labor concerning such matters.
- (e) The Board is an essentially appellate agency. It will not hear matters de novo except upon a showing of extraordinary circumstances. It may remand under appropriate instructions any case for the taking of additional evidence and the making of new or modified findings by reason of the additional evidence.

Subpart B – Review of Wage Determinations

Section 7.2 Who may file petitions for review.

- (a) Any interested person who is seeking a modification or other change in a wage determination under part 1 of this subtitle and who has requested the administrative officer authorized to make such modification or other change under part 1 and the request has been denied, after appropriate reconsideration shall have a right to petition for review of the action taken by that officer.
- (b) For purpose of this section, the term interested person is considered to include, without limitation:
- (1) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any laborer or mechanic, or any labor organization which represents a laborer or mechanic, who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

- (2) any Federal, State, or local agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to the Davis-Bacon Act or any of its related statutes.

Section 7.3 Where to file.

The petition (original and four copies) accompanied by a statement of service shall be filed with the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210. In addition, copies of the petition shall be served upon each of the following:

- (a) The Federal, State, or local agency, or agencies involved;
- (b) the officer issuing the wage determination; and
- (c) any other person (or the authorized representatives of such persons) known, or reasonably expected, to be interested in the subject matter of the petition.

Section 7.4 When to file.

- (a) Requests for review of wage determinations must be timely made. Timeliness is dependent upon the pertinent facts and circumstances involved, including without limitation the contract schedule of the administering agency, the nature of the work involved, and its location.
- (b) The Board shall under no circumstances request any administering agency to postpone any contract action because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other interested person.

Section 7.5 Contents of petitions.

- (a) A petition for the review of a wage determination shall:
 - (1) Be in writing and signed by the petitioner or his counsel (or other authorized representative);
 - (2) be described as a petition for review by the Administrative Review Board;
 - (3) identify clearly the wage determination, location of the project or projects in question, and the agency concerned;
 - (4) state that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request;
 - (5) contain a short and plain statement of the grounds for review; and
 - (6) be accompanied by supporting data, views, or arguments.
- (b) A petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member of the Board.

Section 7.6 Filing of wage determination record.

- (a) In representing the officer issuing the wage determination the Solicitor shall, among other things, file promptly with the Board a record supporting his findings and conclusions, after receipt of service of the petition.
- (b) In representing the officer issuing the wage determination the Solicitor shall file with the Board a statement of the position of the officer issuing the wage determination concerning any findings challenged in the petition; and shall make service on the petitioner and any other interested persons.

Section 7.7 Presentations of other interested persons.

Interested persons other than the petitioner shall have a reasonable opportunity as specified by the Board in particular cases to submit to the Board written data, views, or arguments relating to the petition. Such matter (original and four copies) should be filed with the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210. Copies of any such matter shall be served on the petitioner and other interested persons.

Section 7.8 Disposition by the Administrative Review Board.

- (a) The Board may decline review of any case whenever in its judgment a review would be inappropriate or because of lack of timeliness, the nature of the relief sought, or other reasons.
- (b) The Board shall decide the case upon the basis of all relevant matter contained in the entire record before it. The Board shall notify interested persons participating in the proceeding of its decision.
- (c) Decisions of the Board shall be by majority vote. A case will be reviewed upon the affirmative vote of one member.

Subpart C – Review of Other Proceedings and Related Matters

Section 7.9 Review of decision in other proceedings.

- (a) Any party or aggrieved person shall have a right to file a petition for review with the Board (original and four copies), within a reasonable time from any final decision in any agency action under part 1, 3, or 5 of this subtitle.
- (b) The petition shall state concisely the points relied upon, and shall be accompanied by a statement setting forth supporting reasons. Further, the petition shall indicate whether or not the petitioner consents to the disposition of the questions involved by a single member.

- (c) A copy of the presentation shall be served upon the officer who issued the decision, and upon any other party or known interested person, as the case may be. In representing the officer who issued the final decision in any agency action under parts 1, 3, or 5 of the subtitle, the Solicitor shall, among other things, file promptly with the Board a record supporting the officer's decision, including any findings upon which the decision is based, after receipt of service of the petition.
- (d) In representing the officer issuing a final decision in any agency action under parts 1, 3, and 5 of this subtitle, the Solicitor shall file with the Board a statement of the position of the officer who issued the final decision at issue, concerning the decision challenged; and shall make service on the petitioner and any other interested persons.
- (e) The Board shall afford any other parties or known interested persons a reasonable opportunity to respond to the petition. Copies of any such response shall be served upon the officer issuing the decision below and upon the petitioner.
- (f) The Board shall pass upon the points raised in the petition upon the basis of the entire record before it, and shall notify the parties to the proceeding of its decision. In any remand of a case as provided in Sec. 7.1(e), the Board shall include any appropriate instructions.

Subpart D – Some General Procedural Matters

Section 7.11 Right to counsel.

Each interested person or party shall have the right to appear in person or by or with counsel or other qualified representative in any proceeding before the Board.

Section 7.12 Intervention; other participation.

For good cause shown, the Board may permit any interested person or party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing (original and four copies) and shall state with precision and particularity:

- (a) The petitioner's relationship to the matters involved in the proceedings, and
- (b) the nature of the presentation which he would make. Copies of the petition shall be served to all parties or interested persons known to participate in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

Section 7.13 Consolidations.

Upon its own initiative or upon motion of any interested person or party, the Board may consolidate in any proceeding or concurrently consider two or more appeals which involve

substantially the same persons or parties, or issues which are the same or closely related, if it finds that such consolidation or concurrent review will contribute to a proper dispatch of its business and to the ends of justice, and it will not unduly delay consideration of any such appeals.

Section 7.14 Oral proceedings.

- (a) With respect to any proceeding before it, the Board may upon its own initiative or upon request of any interested person or party direct the interested persons or parties to appear before the Board or its designee at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or facilitate the disposition of the proceeding.
- (b) In its discretion, the Board, or a single presiding member, may permit oral argument in any proceeding. The Board or the presiding member, shall prescribe the time and place for argument and the time allotted for argument. A petitioner wishing to make oral argument should make the request therefor in his petition.

Section 7.15 Public information.

- (a) Subject to the provisions of Secs. 1.15, 5.6, and part 70 of this subtitle, all papers and documents made a part of the official record in the proceedings of the Board and decisions of the Board shall be made available for public inspection during usual business hours at the office of the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210.
- (b) Facsimile copies of such papers, documents and decisions shall be furnished upon request. There shall be a charge of 25 cents for each facsimile page reproduction except for copies of materials duplicated for distribution for no charge as provided in paragraph (c) of this section. Postal fees in excess of domestic first class postal rates as are necessary for transmittal of copies will be added to the per-page fee specified unless stamps or stamped envelopes are furnished with the request.
- (c) No charge need to be made for furnishing:
 - (1) Unauthenticated copies of any rules, regulations, or decisions of general import,
 - (2) Copies to agencies which will aid in the administration of the Davis-Bacon and related acts,
 - (3) Copies to contractor associations and labor organizations for general dissemination of the information contained therein, and
 - (4) Only occasionally unauthenticated copies of papers and documents.

Section 7.16 Filing and service.

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- (a) Filing. All papers submitted to the Board under this part shall be filed with the Executive Director of the Administrative Review Board, U.S. Department of Labor, Washington, DC 20210.
 - (b) Number of copies. An original and four copies of all papers shall be submitted.
 - (c) Manner of service. Service under this part shall be by the filing party or interested person, service may be personal or may be by mail. Service by mail is complete on mailing.
 - (d) Proof of service. Papers filed with the Board shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and the manner of service and the names of the person or persons served, certified by the person who made service.

Section 7.17 Variations in procedures.

Upon reasonable notice to the parties or interested persons, the Board may vary the procedures specified in this part in particular cases.

Section 7.18 Motions; extensions of time.

- (a) Except as otherwise provided in this part, any application for an order or other relief shall be made by motion for such order or relief. Except when made orally before the Board, motions shall be in writing and shall be accompanied by proof of service on all other parties or interested persons. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party or interested person, as the case may be, may respond to the motion within such time as may be provided by the Board.
- (b) Requests for extensions of time in any proceeding as to the filing of papers or oral presentations shall be in the form of a motion under paragraph (a) of this section.

Federal Labor Standards Coverage in Major HUD Programs

A. HOUSING.

1. FHA non-single family mortgage insurance under the National Housing Act: Secs. 207; 213; 220; 221(d)(3), (d)(4), and (h)(1); 231; 232; 233; 234(d); 241 (supplemental loans only); and 242.

- a. **Statute:** Sec. 212 of the National Housing Act (for all programs except Sec. 241); Sec. 241(b)(5) (for Sec. 241 supplemental loans).
- b. **Regulation:** §200.33; §241.645 for supplemental energy loans in non-insured projects.
- c. **Contract Form:** HUD-92554M (*formerly HUD-2554*). See also references to the HUD-92554M in the MAP Guide, Secs. 12.2.B, and 12.16.C (August 2011).
- d. **Notes:**

- (1) **Threshold:** DB applicability threshold for Sec. 220 and Sec. 233 is dwellings designed for 12 or more families. Threshold for Sec. 235(h)(1) is dwelling designed for 8 or more families. No threshold for Sec. 221(d)(3) and (d)(4).

Section 241 supplemental loans: are subject to DB only if the original mortgage was covered by DB – see §200.33(a)(2). [HUD regulations (§241.645) also require DB on supplemental loans for energy related loans in non-insured projects; however, this program has not been implemented].

- (2) **Overtime:** CWHSSA overtime provisions do not apply where no assistance other than mortgage insurance is given; however, under Sec. 212 of the National Housing Act, Sec. 242 workers must receive time-and-a-half overtime after 8 hours per day or 40 hours per week.
- (3) **Volunteers:** The Secretary may waive DB for volunteers in certain cases under Secs. 221(d)(3) and (d)(4), 221(h)(1), 231, 232, 236 and 242.
- (4) **Section 242:** The HUD Office of Insured Healthcare Facilities is responsible for labor standards administration and enforcement relating to projects insured under Section 242.

2. Section 202 Supportive Housing for the Elderly

- a. **Statute:** Sec. 202(j)(5) of the Housing Act of 1959
- b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).

-
- c. **Contract Form:** HUD-92554M
 - d. **Notes:**
 - (1) Threshold: DB applies to construction of housing with 12 or more assisted units.
 - (2) Volunteers: Exempt.
3. **Assisted Living Conversion Program (ALCP) for Sec. 202 Projects**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively through language in Notices of Funding Availability (NOFAs).
 - b. **Regulation:** See relevant NOFA.
 - c. **Notes:** NOFAs apply DB and CWHSSA overtime requirements where the total cost of physical conversion to an Assisted Living Facility (ALF) (and including any additional renovation work undertaken at the same time) is \$500,000 or more (including ALCP grant funds, owner funds, or third party funds ...) and in which the ALF portion of the project is 12 units or more.
4. **Sec. 811 Supportive Housing for Persons with Disabilities**
- a. **Statute:** Sec. 811(j)(6) of the Cranston-Gonzalez National Affordable Housing Act.
 - b. **Regulation:** §891.155(d); see also §891.540(c) (loan disbursement procedures).
 - c. **Contract Form:** HUD-92554M
 - d. **Notes:**
 - (1) Threshold: DB applies to construction of housing with 12 or more assisted units. A group home for persons with disabilities is not covered by DB (see §891.155(d)(1)).
 - (2) Volunteers: Exempt.
5. **Housing Finance Agency Risk-Sharing Program for insured affordable multifamily project loans (Sec. 542(c) of the HCD Act of 1992)**
- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
 - b. **Regulation:** §266.225; see also §§266.210(e) and 266.215(b).
 - c. **Notes:**
 - (1) Threshold: Under §266.225, DB applies if:
 - (i) advances are insured;
 - (ii) the project involves new construction or substantial rehabilitation; and,
 - (iii) the project will contain 12 or more units.
 - (2) Volunteers: Regulatory exemption for volunteers.
 - (3) Delegation: HUD may delegate to the HFA routine DB administration and enforcement functions.
-

6. Assisted Housing Drug Elimination Program

- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed administratively.
- b. **Regulation:** §761.40(a)
- c. **Notes:**
 - (1) HUD wage rates: The regulation also mentions HUD-determined prevailing wage rates for non-routine maintenance. This provision applies to the public housing component only, not to non-public assisted or insured housing.
 - (2) Volunteers: Exempt.

7. Property Disposition: Up-Front Grants

- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon requirements imposed in Grant Agreement.
- b. **Regulation:** No Davis-Bacon requirement in regulation; see Article XIII of Sample Up-Front Grant Agreement.

8. Property Disposition – Section 8 Project-based Assistance

- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:** §886.313(c)(2)
- c. **Notes:**
 - (1) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
 - (2) Volunteers: Except.

9. Repairs on HUD-Owned and HUD-MIP Property

- a. **Statute:** The Davis-Bacon Act (applies to direct Federal contracts in excess of \$2000 for construction, alteration, and/or repair).

10. Housing Programs Not Covered

- a. Single family FHA mortgage insurance programs.
- b. Sec. 223(f) mortgage insurance for refinancing (in general).
- c. Sec. 8 contract renewals under Mark-to-Market program without new FHA mortgage insurance.

B. PUBLIC HOUSING**1. Public Housing, including HOPE VI beginning in FY 2000**

- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:**
 - (1) Modernization -- §968.110(e) and (f)
 - (2) Mixed finance -- §941.610(a)(8)(vi)
 - (3) Preemption of higher State or local prevailing wage rates on development, maintenance and modernization (PHA projects) - §965.101

- c. **Contract Forms:** HUD-5370 (Construction contracts >\$100,000, see Clauses 46 and 47); HUD-5370-EZ (Construction contracts \$2,000 - \$100,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II).
- d. **Notes:**
 - (1) Davis-Bacon - DB rates apply to public housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to public housing maintenance work (including “non-routine” maintenance, as defined in Modernization regulations in §968.105).
 - (3) Force Account - DB and HUD wage rates apply to PHA employees (“force account” workers) as well as to contractor employees.
 - (4) Threshold: No unit threshold for DB or HUD wage rate applicability to public housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (5) Preemption: Prevailing rates determined under State law that are higher than applicable DB or HUD-determined rates are inapplicable and may not be enforced. But PHA may choose to pay higher rates or bargain with unions to pay higher rates. See §965.101.
 - (6) Volunteers: Exempt.

2. **Section 8 Housing**

- a. **Statute:** Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:** For tenant-based assistance that is project-based by a PHA: §983.11(c)(7); see also §983.104(b)(2)(v) (evidence of completion). See also Sec. 8 SRO regulations below, §882.804(b), applicable to McKinney Act SRO programs administered by CPD.
- c. **Contract Form:** HUD-52531-B (Part II of the Agreement to Enter Into Housing Assistance Payments Contract) -- see Sections 2.4 and 2.8.
- d. **Notes:**
 - (1) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
 - (2) Volunteers: Exempt.

3. **Public Housing Drug Elimination Program**

- a. **Statute:** No Davis-Bacon provisions under the Public and Assisted Housing Drug Elimination Act of 1990; however, Davis-Bacon or HUD-determined wage rates apply to public housing under Secs. 12(a) and (b) of the U.S. Housing Act of 1937.
- b. **Regulation:** §761.40(a)

- c. **Notes:** DB applies to physical improvements *except* that HUD-determined wage rates apply to non-routine maintenance on public housing.

C. COMMUNITY PLANNING AND DEVELOPMENT

1. CDBG/NSP/Sec. 108/EDI/BEDI

- a. **Statute:** Sec. 110 of Housing and Community Development Act of 1974.
- b. **Regulation:** §570.603; see also §570.200(c)(3) (public improvements not initially assisted with CDBG)
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** DB applies only when construction work is financed in whole or in part with Title I assistance (i.e., CDBG/Sec. 108 loan guarantee/EDI/BEDI). Examples: Financing includes use of Title I assistance in permanent take-out loan, where Title I loan is known or contemplated when construction financing is arranged. Financing includes use of Title I assistance to pay principal or pay or subsidize interest on construction loan. Use of Title I assistance solely for non-construction expenses -- e.g., purchase of land, architect and engineering fees -- does not trigger DB.
 - (1) **Threshold:** DB is applicable to residential property containing 8 or more units. Mixed-use property containing less than 8 units is covered unless entire rehab is clearly limited to residential portion.
 - (2) **Volunteers:** Exempt.

2. HOME

- a. **Statute:** Sec. 286 of the HOME Investment Partnerships Act (Title II of the Cranston-Gonzalez National Affordable Housing Act).
- b. **Regulation:** §92.354
- c. **Contract Form:** Form HUD-4010, Federal Labor Standards Provisions
- d. **Notes:** Unlike CDBG, DB is triggered regardless of whether HOME assistance finances construction or non-construction expenses (e.g., purchase of land).
 - (1) **Threshold:** DB is applicable to contracts for the construction of affordable housing with 12 or more HOME-assisted units. Applicability depends on how many HOME-assisted units are under the contract; not how many units are in the HOME project.
 - (2) **Sweat Equity:** DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.

- (3) Volunteers: Exempt.

3. **McKinney Act SRO Provisions**

- a. Section 8 assistance for SRO dwellings under Title IV, Subtitle E of the McKinney-Vento Homeless Assistance Act (formerly Stewart B. McKinney Homeless Assistance Act)
- (1) **Statute:** no statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
 - (2) **Regulation:** §882.804(b)
 - (3) **Contract Form:** HUD-52538-B, Part II of Agreement to Enter Into Housing Assistance Payments Contract (Sec. 8 Moderate Rehab Program), see Clause 2.3.
 - (4) **Notes:**
 - (i) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
 - (ii) Volunteers: Exempt.
- b. Shelter Plus Care component for moderate rehabilitation for SROs under Title IV, Subtitle F, Part 5 of the McKinney-Vento Homeless Assistance Act.
- (1) **Statute:** No statutory reference to labor standards – governed by Section 8 program requirements, including labor standards under Section 12(a) and (b) of the U.S. Housing Act.
 - (2) **Regulation:** §882.804(b), which is made applicable by Shelter Plus Care regulations in §582.100(d)(5)
 - (3) **Contract Form:** Contact SNAPs; there is a contract form but it does not have a form number.
 - (4) **Notes:**
 - (i) Threshold: DB is applicable to projects with 9 or more Section 8-assisted units.
 - (ii) Volunteers: Exempt.

4. **Loan Guarantee Recovery Fund (Church Arson)**

- a. **Statute:** No statutory requirement for Davis-Bacon; Davis-Bacon imposed administratively.
- b. **Regulation:** §573.9(d)
- c. **Notes:**
 - (1) Threshold: DB is applicable to the rehabilitation of residential property only if the property contains 8 or more units.
 - (2) Volunteers: Exempt.

5. **CPD Programs Not Covered**

- a. Housing Opportunities for Persons with AIDS (HOPWA)

- b. McKinney Act programs other than SRO moderate rehab, i.e., Emergency Shelter Grants, Supportive Housing, Shelter Plus Care other than SRO
- c. Rural Housing and Economic Development Assistance
- d. Self-Help Homeownership Opportunity Program (SHOP)
- e. Social Service Block Grants distributed in connection with Empowerment Zones
- f. Economic Development Initiative/Special Purpose (EDISP) Grants funded in appropriations acts

D. **NATIVE AMERICAN PROGRAMS**

1. **Indian Housing Block Grants (IHBG) under NAHASDA**

- a. **Statute:** Sec. 104(b) of NAHASDA, as amended.
- b. **Regulation:** §1000.16
- c. **Contract Forms:** HUD-5370 (Construction contracts >\$100,000, see Clauses 46 and 47); HUD-5370 (Construction contracts \$2,000 - \$100,000, see Clause 14); HUD-5370-C (Non-construction contracts, see Section II). Note: Clauses for inapplicability of higher State or tribal wage rates should be deleted; it does not apply to NAHASDA programs).
- d. **Notes:**
 - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
 - (3) Force Account - DB and HUD wage rates apply to TDHE employees (“force account” workers) as well as to contractor employees.
 - (4) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.
 - (5) Tribally-determined Prevailing Wage Rates: Exclusion from DB and HUD rates for contracts or agreements covered by laws or regulations adopted by an Indian tribe that require payment of not less than prevailing wages as determined by the Indian tribe.
 - (6) Threshold: No unit threshold for DB applicability to IHBG assisted housing. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (7) Volunteers: Exempt.
 - (8) Sweat Equity: DB inapplicable to family members who provide labor in exchange for acquisition for homeownership or in lieu of, or as a supplement to, rent payments.

2. Housing Assistance for Native Hawaiians under Title VIII of NAHASDA

- a. **Statute:** Sec. 805(b) of NAHASDA
- b. **Regulations:** §1006.345
- c. **Notes:**
 - (1) Davis-Bacon - DB rates apply to affordable housing “development”.
 - (2) HUD Wage Rates - HUD-determined prevailing wages apply to affordable housing “operations”, which includes maintenance.
 - (3) Force Account - DB and HUD wage rates apply to Department of Hawaiian Home Lands employees (“force account” workers) as well as to contractor employees.
 - (4) Tribally-determined Prevailing Wage Rates: Exclusion from DB and HUD rates for contracts or agreements covered by laws or regulations adopted by an Indian tribe that require payment of not less than prevailing wages as determined by the Indian tribe.
 - (5) Threshold: No unit threshold for DB applicability to Native Hawaiian housing assistance. DB dollar threshold at \$2,000; \$2,000 dollar threshold for maintenance contracts.
 - (6) Volunteers: Exempt.

3. ONAP Programs Not Covered

- a. Indian CDBG (Davis-Bacon waived under statutory authority to waive; see 24 CFR 1003.603)
- b. Sec. 184 Indian housing loan guarantees

Factors of Labor Standards Applicability

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 Appendix discusses some of the differences and explains how the language is interpreted for applicability purposes. These sections refer to the specific language in each statutory provision; see Appendix II-1 for the complete text of the statutory provision.

A. Housing and Community Development Act of 1974, Section 110(a) (CDBG, Section 108 Loan Guarantee, EDI/BEDI)

1. *...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 pay the interest charged 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.

2. *...in whole or in part...*

Notice that the statute seems to anticipate 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.

3. *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 (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.

4. *...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 7 or less units. Although the statute refers to the “rehabilitation” of residential property, this exemption has been interpreted to include the new construction of residential property containing 7 or less 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+ 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.
- 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.

B. National Affordable Housing Act, Section 286(a) (HOME)

1. ***...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 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 downpayment 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 allowable 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 other than the assisted units.

2. *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 does not follow “construction work” or “projects”. This factor has implications in two ways:

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.

3. *Sweat Equity.*

HOME provides for a sweat equity program (see NAHA Section 255) which 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.

C. U.S. Housing Act of 1937, Section 12(a) (Public Housing)

1. *Any contract for loans, contributions, sale, or lease pursuant to this Act...*

Prevailing wage requirements apply through provisions required in any contract for loans, contributions, sale, or lease.... Generally, the “contract” referenced, here, relates to the Annual Contributions Contract between HUD and the public housing agency. This term (contract) may also relate to an Agreement to Enter Into a Housing Assistance Payments Contract (AHAP) or an Agreement to Enter Into a Project Rental Assistance Contract (APRAC). These Agreements are executed for housing projects that will receive Section 8 rental assistance.

Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. *...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance*

laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...

Notice that, unlike other HUD labor standards provisions, the USHA makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that “force account” labor – workers employed directly by the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. ***...(Davis-Bacon wage rates) shall be paid...in the development of the project involved (including a project with nine or more units assisted under Section 8 of this Act, where the public housing agency or the Secretary and the builder or the sponsor enter into an agreement for such use ...before construction or rehabilitation is commenced)....***

Notice, also, that the only applicability thresholds pertain to Section 8 projects: there must be 9 or more Section 8-assisted units *and* there must be an agreement for the Section 8 assistance before construction begins. These agreements are referred to as AHAPs and/or APRACs. The 9 unit threshold refers to the number of units in the project that are Section 8-assisted, not to the total number of units in the project. The USHA contains no unit threshold for public housing.

While the USHA does not contain a dollar threshold, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

D. Native American Housing Assistance and Self-Determination Act of 1996, Section 104(b), (Indian Housing)

1. ***Any contract or agreement for assistance, sale, or lease pursuant to this Act...***

Similar to the USHA (public housing), prevailing wage requirements apply through provisions required in any contract or agreement for assistance, sale, or lease.... Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. ***...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...***

Again, NAHASDA mirrors the USHA in that it makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that “force account” labor – workers employed directly by

the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. ***Threshold.***

NAHASDA contains no dollar or number of units threshold. However, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

4. ***(HUD-determined and/or Davis-Bacon and wage provisions) shall not apply to any contract ..., if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian Tribe...***

This provision allows for the preemption of Federally-determined (HUD-determined and/or Davis-Bacon) wage rates where a Tribe has determined prevailing wage rates for operations and/or development work. Note that the tribal determination must be of rates that “prevail”¹ and the tribal law or regulation must be applicable to the work in question. *(See also ONAP Program Guidance 2003-04, dated 2/4/2003.)*

5. ***Sweat Equity.***

HUD has concluded that, consistent with a provision in the USHA (predecessor to NAHASDA), family members providing sweat equity labor for construction or rehabilitation of a home assisted under NAHASDA are excluded from prevailing wage (HUD-determined and/or Davis-Bacon) coverage. *Sweat equity* means members of an eligible family may contribute labor toward the development of a homeownership project. These sweat equity participants are not covered by prevailing wage requirements. *(See also, ONAP Program Guidance 2003-03, dated 2/4/2003.)*

E. Housing Assistance for Native Hawaiians (Title VIII of NAHASDA), Section 805(b)4(b), (Hawaiian Homelands)

1. ***Any contract or agreement for assistance, sale, or lease pursuant to this Act...***

Similar to the USHA (public housing), prevailing wage requirements apply through provisions required in any contract or agreement for assistance, sale, or lease....

Prevailing wage applicability is *not* tied to a funding source nor to a specific use of any

¹ HUD has not defined “prevailing” for the purposes of tribally-determined wage rates. HUD, also, has not prescribed policies or procedures for the administration or enforcement of such tribal rates. HUD defers to each Tribe to establish the definitions, parameters and methodology for the determination, administration and enforcement of tribally-determined prevailing wage rates.

funds. This means that Federal funding for the particular development or operations work is not a prerequisite to Davis-Bacon or HUD-determined wage rate applicability.

2. ***...(HUD-determined wage rates) shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation..., ...(Davis-Bacon wage rates) shall be paid to all laborers and mechanics employed in the development...***

Again, NAHASDA mirrors the USHA in that it makes no distinction between laborers and mechanics employed by the agency and those employed by contractors and subcontractors. This means that “force account” labor – workers employed directly by the agency, whether on a full-time, part-time, permanent or temporary basis - must receive the prevailing wages applicable to the work they perform.

3. ***Threshold.***

NAHASDA contains no dollar or number of units threshold. However, HUD observes the statutory Davis-Bacon Act \$2,000 threshold for development work and has implemented a \$2,000 threshold for maintenance contracts.

4. ***Sweat Equity.***

HUD has concluded that, consistent with a provision in the USHA (predecessor to NAHASDA), family members providing sweat equity labor for construction or rehabilitation of a home assisted under NAHASDA are excluded from prevailing wage (HUD-determined and/or Davis-Bacon) coverage. *Sweat equity* means members of an eligible family may contribute labor toward the development of a homeownership project. These sweat equity participants are not covered by prevailing wage requirements. (See also, ONAP Program Guidance 2003-03, dated 2/4/2003.)

HUD's Willful Violation/Falsification Indicators

As discussed in Chapter 5, LRS/LCA perform “spot-checks” of certified payroll reports (CPRs) and related documents in order to monitor the compliance status of employers engaged on projects covered by prevailing wage requirements. Spot-checks are intended to disclose obvious, face-of-the-record violations and, more importantly, to detect evidence of willful violations and payroll falsification.

In many of the more egregious noncompliance cases, the violating employer will attempt to conceal underpayments on payroll reports by falsifying the data. HUD has chosen to focus particularly on falsification because such conduct by employers, generally, involves substantial amounts of wage underpayments and may lead to debarment, and criminal prosecution or fines for willful violations and/or making false statements.

The following indicators describe patterns that suggest the payroll data have been falsified to conceal willful violations. Other willful violations may *not* involve what appears on CPRs but, rather, what is *not* reported on CPRs. These are also described in this appendix.

A. Falsification appearing on CPRs.

1. **Ratio of laborers to mechanics.** Except for concrete, landscaping and similar trades, the ratio of laborers to mechanics should not exceed 1 : 1. A higher ratio of laborers to mechanics normally indicates misclassification. That is, the workers classified and paid as laborers are, instead, performing the work of a mechanic which requires a wage higher than that of a laborer. Therefore, these workers are underpaid. The false information on the CPR may be limited to the classification of work.
2. **Too few or irregular hours.** Most workers are employed on a regular 40 hour per week basis. CPRs that consistently reflect less than 40 hours per week for all or certain groups of employees, or that reflect erratic work schedules (e.g., the crew works only a few hours per day scattered throughout the work week), indicate that the hours may have been reduced to give the appearance of compliance. The falsification in these cases may be limited to the hours worked.
3. **Discrepancies in wage computations.** CPRs that reflect frequent discrepancies in wage computations, e.g., gross wage payments in round numbers (\$400/week) computed from an uneven hourly wage rate (\$15.67/hour), indicate that the employees may be working on a piece rate basis, or at an even (e.g., \$15/hour) wage rate. Here, the falsification may involve the hours worked, the rate of pay, or both.
4. **Extraordinary deductions.** Unexplained or unusually high deductions may indicate that employees are being required to kick-back a portion of their

earnings. While this would indicate willful violations, it does not necessarily indicate falsification. The information on the CPR may otherwise be accurate.

B. Willful violations that do not appear on CPRs.

1. **Compliance excess.** Some violating employers attempt to “boost” their compliance factor by submitting “labor releases” and other documents that are not required or requested. Such documents, offered without request, suggest that the employer may be attempting to distract the compliance officer (LRS/LCA) from actual violations.
2. **“Ghost” workers.** In some instances, employees are working on the project but these employees do not appear on the CPRs at all. In these cases, the employer may carry a core group of employees that is reported on the CPR. But the employer also has a second group of employees, perhaps day-workers or other temporary employees, and this second group of employees doesn’t appear on CPRs at all. The core group may be permanent employees; they are usually paid more than the temporary employees. The second group of employees is underpaid but, because the second group does not appear on the CPRs, they are “invisible” to the compliance officer (LRS/LCA). The compliance officer can’t assess compliance with labor standards with respect to the “ghost” workers.
3. **Willful violation payment schemes.** In some cases, worker or other complaints may be the only way that some willful violations are revealed. Examples of willful underpayment schemes that will not appear on a CPR include:
 1. **Wages paid in cash.** Employers may attempt to conceal underpayments by making wage payments in cash. It does not matter what is reported on the CPR, the cash in the pay envelope is less than what is reported and required.
 2. **Employer “cashes” paychecks.** Employers may issue payroll checks but the employer will require employees to endorse/turnover the paycheck to the employer in exchange for a lesser amount in cash.
 3. **Employer facilitates employee “cashing” of paychecks.** Employers may issue payroll checks and take action to ensure that the checks are processed (cashed) through the bank. In such cases the employer instructs the employees to cash the paychecks and then requires the employees to kick-back a portion of the check proceeds to the employer in cash.

Deposit Schedule

Page 1 of 2

Project: Any Project Name
Any project Number
Any Project Location

Depositor: Depositor Name
Street Address
Location

Employer: Subcontractor/Employer Name (Alphabetical Order) – Deposit Purpose 3, 4

Employee	DBRA Due	CWHSSA Due	Total Due
Employee Name (Alphabetical Order) Street Address City, State Zip Code	\$2,003.98	\$17.96	\$2,021.94
Employee Name Street Address City, State Zip Code	\$26.20	\$0.00	\$ 26.20
CWHSSA Liquidated Damages		\$20.00	\$ 20.00
Sub-Total	\$2,030.18	\$ 37.96	\$2,068.14

Employer: Subcontractor/Employer Name – Deposit Purpose 1, 4

Employee	DBRA Due	CWHSSA Due	Total Due
Employee Name (Alphabetical Order) Street Address City, State Zip Code	\$1,913.26	\$142.16	\$2,055.42
Employee Name Street Address City, State Zip Code	\$985.25	\$48.16	\$1,033.41
Employee Name Street Address City, State Zip Code	\$591.52	\$0.00	\$ 591.52
CWHSSA Liquidated Damages		\$60.00	\$ 60.00
Sub-Total	\$3,490.03	\$ 250.32	\$3,740.35

Deposit Schedule

Page 2 of 2

Project: Any Project Name
Any project Number
Any Project Location

Depositor: Depositor Name
Street Address
Location

Employer: Subcontractor/Employer Name – Deposit Purpose 2

Pending completion of DOL investigation	\$135,000.00
Sub-Total	\$135,000.00

Employer	DBRA Due	CWHSSA Due	Total Due
Subcontractor/Employer Name (Alpha Order)	\$2,030.18	\$37.96	\$2,068.14
Subcontractor/Employer Name	\$3,490.43	\$250.32	\$3,740.75
Subcontractor/Employer Name	\$135,000.00	\$0.00	\$135,000.00
Grand Total	\$140,520.61	\$ 288.28	\$140,808.89

Sample Payee Locator Letter

[REDACTED], 20XX

Name
Street Address
City, State Zip Code

Dear Mr/Ms. :

Subject: Wage restitution for work performed
Project: Name
Number
Location

The construction of Project Name was subject to Davis-Bacon prevailing wage requirements. We have determined that you were underpaid for work that you performed there. We are holding back wages for you and need to verify your Social Security Number and current mailing address so that we can send a check to you. Please contact me if you would prefer that we wire these funds directly to your bank account.

Please complete and sign the bottom portion of this letter and return it to this office in the preaddressed, post-paid envelope provided. You must provide your Social Security Number in order to verify your identity and a current mailing address. We ask for your telephone number so that we can contact you if there are any questions about your back wage payment. We will order a payment for you as soon as we receive your response.

Thank you for your time and prompt attention to this request. If you have any questions or would like more information about this request, please feel free to contact me at [REDACTED] Phone, or by email at [REDACTED]@hud.gov

Sincerely,

Name
Labor Relations Specialist

Return this portion to HUD in the envelope provided: Employer: [REDACTED]
Project Name, Number

Name	Social Security Number
Street	Telephone Number
City, State, Zip Code	Signature

Sample Tax Withholding Notice

, 20XX

Name
Street Address
City, State Zip Code

Dear Mr/Ms. :

Subject: Wage restitution for work performed
Project: Name
Number
Location

A wage restitution payment has been ordered for you. You will receive either a check by mail or, if you chose an electronic payment, a deposit to a bank account you specified. This money represents wages and is subject to income taxes. This table shows the gross amount, deductions taken, and the amount of the check or deposit that you will receive:

Gross Wages	Federal Tax	Social Security	Medicare	Total Deduction	Net Wages
\$	\$	\$	\$	\$	\$

A form W-2 will be mailed to you after the end of this calendar year at the address you provided. It will reflect the wages you earned, the deductions taken, and the net amount you received. You **must** be certain to inform the HUD Office of Labor Relations of any change to your mailing address between now and February of next year (20XX) so that we can ensure that the W-2 is sent to your current address.

If you have any questions, please contact me at Phone, or by email at Name@**hud.gov**

Sincerely,

Name
Labor Relations Specialist

Unfound Worker Schedule

Page 1 of 2

Project: Any Project Name
Any project Number
Any Project Location

Depositor: Depositor Name
Street Address
Location

Employer: Subcontractor/Employer Name (Alphabetical Order)

Employee	DBRA Due	CWHSSA Due	Total Due
Employee Name (Alphabetical Order) Street Address City, State Zip Code	\$632.48		\$ 632.48
Employee Name Street Address City, State Zip Code	\$589.74		\$ 589.74
Employee Name Street Address City, State Zip Code	\$58.94		\$ 58.94
Employee Name Street Address City, State Zip Code	\$826.47		\$ 826.47
Sub-Total	\$2,107.63	\$ 0.00	\$2,107.63

Employer: Subcontractor/Employer Name

Employee	DBRA Due	CWHSSA Due	Total Due
Employee Name (Alphabetical Order) Street Address City, State Zip Code	\$1,413.26	\$142.16	\$1,555.42
Employee Name Street Address City, State Zip Code	\$985.25	\$	\$ 985.25
Sub-Total	\$2,398.51	\$ 142.16	\$2,540.67

Unfound Worker Schedule

Page 2 of 2

Project: Any Project Name
Any project Number
Any Project Location

Depositor: Depositor Name
Street Address
Location

Employer: Subcontractor/Employer Name

Employee	DBRA Due	CWHSSA Due	Total Due
Employee Name (Alphabetical Order) Street Address City, State Zip Code	\$122.56		\$ 122.56
Employee Name Street Address City, State Zip Code	\$30.59		\$ 30.59
Employee Name Street Address City, State Zip Code	\$67.52		\$ 67.52
Sub-Total	\$ 220.67	\$ 0.00	\$ 220.67

Employer	DBRA Due	CWHSSA Due	Total Due
Subcontractor/Employer Name (Alpha Order)	\$2,107.63		\$2,107.63
Subcontractor/Employer Name	\$2,398.51	\$142.16	\$2,540.67
Subcontractor/Employer Name	\$220.67		\$ 220.67
Grand Total	\$4,726.81	\$ 142.16	\$4,868.97

Acronyms and Symbols

AAM	All Agency Memorandum (DOL)
AHAP	Agreement to Enter Into a Housing Assistance Payments Contract
ALJ	Administrative Law Judge
APRAC	Agreement to Enter Into a Project Rental Assistance Contract
ARB	Administrative Review Board
BAT	Bureau of Apprenticeship and Training
BEDI	Brownfields Economic Development Initiative
CBA	Collective Bargaining Agreement
CDBG	Community Development Block Grant
CFR	Code of Federal Regulations
CPD	Community Planning and Development
CPR	Certified Payroll Report
CWHSSA	Contract Work Hours and Safety Standards Act
DBA	Davis-Bacon Act
DBRA	Davis-Bacon and Related Acts
DHHL	Department of Hawaiian Home Lands
DOL	Department of Labor
EDI	Economic Development Initiative
EIN	Employer Identification Number
FAR	Federal Acquisition Regulations
FASA	Federal Acquisition Streamlining Act
FHA	Federal Housing Administration
FLSA	Fair Labor Standards Act
FOIA	Freedom of Information Act
HCDA	Housing and Community Development Act of 1974
HFA	Housing Finance Agency
HQLR	Headquarters Office of Labor Relations
HUD	Housing and Urban Development
IHA	Indian Housing Authority
IHBG	Indian Housing Block Grant
LCA	(State or) Local Contracting Agency
LDP	Limited Denial of Participation
LRS	Labor Relations Specialist
MWD	Maintenance Wage Determination
NAHA	National Affordable Housing Act
NAHASDA	Native American Housing Assistance and Self-determination Act
NHHBG	Native Hawaiian Housing Block Grant
NHA	National Housing Act
NRM	Nonroutine Maintenance
OA	Office of Apprenticeship
ODOC	Office of Departmental Operations and Coordination

OLR	Office of Labor Relations
ONAP	Office of Native American Housing
O/T	Overtime
PA	Portal to Portal Act
PHA	Public Housing Agency
PIH	Public and Indian Housing
PW	Prevailing Wage
RLRO	Regional Labor Relations Officer
S/T	Straight-time
SAC	State Apprenticeship Council/Agency
SCA	Service Contract Act of 1965
SRO	Single room occupancy
SSN	Social Security Number
TDHE	Tribally-Designated Housing Entity
TDW(s)	Tribally-determined Wage Rates
TIN	Tax Identification Number
USHA	U.S. Housing Act of 1937
§	Section
¶	Paragraph

Related Web Sites*

GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs (Debarred List)	http://epls.arnet.gov
HUD Office of Labor Relations	http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_relations
HUD Regulations (Title 24)	http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=73dc487322dff2ad86a57724f0f7a2c1&c=ecfr&tpl=/ecfrbrowse/Title24/24tab_02.tpl
HUDClips (Forms and Publications)	http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips
DOL Davis-Bacon and Related Acts Homepage	http://www.dol.gov/whd/contracts/dbra.htm
Davis-Bacon Wage Decisions	http://www.wdol.gov/
DOL Field Operations Handbook (Chapter 15)	http://www.dol.gov/whd/FOH/index.htm
DOL Regulations (Title 29)	http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=283c67f9a7d6085db171ccc372cdfa1c&c=ecfr&tpl=/ecfrbrowse/Title29/29tab_02.tpl

*Active as of 3/21/12