



## Chapter 7: Labor Standards

### Overview

Construction projects funded with CDBG require that certain procedures be followed in order to comply fully with applicable federal and state requirements. For example, federal labor standards require recipients and contractors to meet and document compliance with certain rules associated with the employment and wages of workers on construction projects.

This chapter describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, including bid preparation, compliance with labor standards, pre-construction meetings, on-site interviews, and approval procedures. This chapter overlaps significantly with *Chapter 5: Procurement* and slightly with *Chapter 4: Additional Grantee Requirements* (for equal opportunity).

Essentially, the Labor Standards requirements consist of the following elements:

- Determining Applicability
- Incorporating Required Wage Rates into Bidding and Contracting Documents
- Assuring Contractor Compliance through Reporting & Employee Interviews
- Corrective Actions (if necessary)
- Recordkeeping & Reports

### Section 7.1 Grantee Responsibilities

The grantee is responsible for obtaining wage determinations (also called “wage decisions”), verifying contractor and subcontractor eligibility, conducting pre-bid and pre-construction conferences, verifying all federal contract provisions are in contracts, obtaining all required documentation, reviewing weekly Certified Payroll Reports, conducting site visits for employee interviews, monitoring project compliance, and maintaining appropriate files. Once a construction project becomes subject to federal Labor Standards Provisions (see Section 7.3 of this chapter), the steps outlined in this chapter must be taken to ensure compliance. The grantee should designate a specific staff person, usually the local grant administrator, to serve as the Labor Standards Officer who will be responsible for ensuring compliance with Labor Standards Provisions. (This



chapter refers to the Labor Standards Officer, but these duties may be completed by other local staff of the grantee, sub-recipient, or a consultant.)

Even if the project is not subject to federal Labor Standards provisions, there are Equal Employment Opportunity provisions that must be imposed for such construction contracts – typically smaller housing projects of less than eight units.

### Section 7.2 Pre-Bidding Requirements

The first step in effective management of CDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification - usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Please refer to *Chapter 5: Procurement* for more guidance on bidding.

During this phase, the engineer/architect should be preparing construction documents, and, for infrastructure projects, the grantee should secure the approval/permits of applicable state agencies. While the engineer/architect prepares the technical specifications, the grantee must assess the applicability of Labor Standards and obtain the necessary wage determinations, including the Wage Determination Lock-In Notice (see Section 7.3 of this chapter). If the project is subject to labor standards, the bidding package must contain information about required wage rates and labor standards for the project (see Section 7.4 of this chapter).

**NOTE:** The environmental review must be completed and, if applicable, release of funds obtained prior to publishing the bid advertisement. Please refer to Chapter 3: Environmental Review for more information.

### Section 7.3 Assess the Applicability of Labor Standards Provisions

#### Federal Requirements

Most construction projects including alteration, repair or demolition, funded in whole or in part with federal dollars, must comply with federal Labor Standards Provisions. Applicable laws include the following:



- The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction, alteration, or repair work of more than \$2,000 that is financed in whole or in part with CDBG or other federal funds, regardless of the CDBG amount. See (Section 7.10 of this chapter for clarification regarding construction versus installation in determining wage rate requirements.)  
[40 USC Sections 3141-3148](#)
- The Copeland Anti-Kickback Act requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.  
[40 USC Section 3145](#)
- The Contract Work Hours and Safety Standards Act requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all CDBG-assisted construction contracts of \$100,000 or more. The Act also imposes a financial penalty for failure to pay such overtime wages and requires overtime for traditionally exempt salaried construction workers. (NOTE: Overtime is required for ALL workers via the Fair Labor Standards Act including projects without federal funds.)  
[40 USC Section 3701-3707](#)

HUD has two guides and a handbook that are available for downloading on labor standards requirements. These documents are "Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies" and "Davis Bacon Labor Standards: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects." HUD Handbook 1344.1 also provides detailed guidance on labor standards requirements. HUD also provides links on its website to many forms and instructions used in labor standards administration.

[Making Davis Bacon Work Guide for States](#)

[Davis Bacon Labor Standards: Contractor's Guide](#)

[HUD Handbook 1344.1](#)

[HUD's Davis-Bacon Forms and Instructions](#)

## Exceptions

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:



- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into contracts below \$2,000 in order to circumvent the requirements is not permitted.
- Rehabilitation or new construction of residential properties containing less than eight units with CDBG funds. (**NOTE:** The HOME Program exempts projects of less than 12 units.)
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, procurement of modular (industrialized) and manufactured housing components, and certain pieces of equipment that would not become permanently affixed to the real property. See Installation Work in Section 7.10 below.
- Contracts solely for demolition, when no construction is anticipated on the site.
- Force account labor (construction carried out by municipal employees or, in certain instances, a sub-recipient's employees).
- Volunteers. However, volunteering for part of the project and working part of the project is prohibited.

HCD should be contacted if there is any situation where Davis-Bacon applicability is in question.

### Section 7.4 Bidding and Contracting Requirements

A grantee or the grant administrator must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in *Chapter 5: Procurement*). The grantee is responsible for obtaining all required documentation, monitoring project compliance, and maintaining appropriate files.

#### Preparing Bid Packages to Meet Federal and State Labor Standards Provisions

Once a construction project becomes subject to federal labor standards provisions, the following steps must be taken to ensure compliance. The Labor Standards Officer typically takes responsibility for these steps.



## Step 1: Obtain Applicable Federal Wage Rate Decision

The grantee should access the federal wage rate decisions through the Internet at <https://sam.gov/content/wage-determinations>. Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. When evaluating the type of wage determination to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

**Residential projects** involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

**NOTE:** Floors below ground level used for storage, parking, mechanical systems/equipment, etc., are considered basement floors which are not used in determining a building's height. If the basement will be used for any purpose other than those listed above, contact HCD for assistance in determining its classification.

**Building construction** generally includes construction of sheltered enclosures with walk-in access for the purpose of housing persons (with the exception of activities that meet the definition above), machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Construction of mixed-use buildings (such as upper story housing and commercial on the lower level) would be subject to this classification. Also, the installation of heavy machinery and/or equipment that does not generally change the project's character as a building.

**Highway projects** include construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction

**Heavy construction** includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.



HCD staff should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary, including those instances where the grantee is required to request “multiple” wage determinations from the Department of Labor. Multiple wage determinations may be required when the project contains separate and distinguishable components that fall into different categories of construction, for example a large mixed-use project.

If the website does not contain a wage decision applicable for your project, the grantee should submit a Request for Wage Determination Form to DOL.

[DOL Request for Wage Determination Form SF 308](#)

**CAUTION:** If the grantee fails to include the correct wage rate determination(s), the grantee will be responsible for paying any difference between the applicable wage rates and the wages paid by the contractor based upon the information provided in the bid package.

### **Step 2: Add Federal Construction Contract Provisions to the Bid Package**

The applicable wage rate decision must be a part of the bid package. The bid package must also contain language explaining all labor standards requirements, which are designed to protect employee rights (in addition to other federal procurement provisions). Grantees may attach the Federal Labor Standards Provisions (HUD Form 4010) to meet this requirement.

[Federal Labor Standards Provisions \(HUD 4010\)](#)

### **Step 3: Procurement Requirements**

Once the bid document is prepared, it is time to advertise for construction bids. Refer to *Chapter 5: Procurement, Section 5.9* for specific instructions on how to proceed with the bidding process.

### **Step 4: Wage Determination Lock-in and Contracting**

Because the U.S. Department of Labor (DOL) continually monitors the economic conditions of the construction contracting profession, the wage rates are subject to change. It is essential that the grantee verify that the most current rates are being utilized. The Davis-Bacon Wage Determination that is in effect no more than 10 days prior to the bid opening is the wage decision that must be used for all construction related activities on that federally funded project. Therefore, the following actions must be taken:



1. Grantees must obtain the current wage decision no earlier than 10 days prior to the bid opening and provide it to the project architect or engineer to be included in the bid package and forwarded to all prospective bidders.
2. The Labor Standards Officer must maintain documentation of the wage decisions at lock-in date. The Wage Determination Lock-In Notice should be used for documentation and reporting to HCD (see Appendix 7-1).
3. Wage Determinations are only effective for 90 calendar days after the bid opening. On the 91st day, the previously issued determination expires. If the contract is not awarded within 90 calendar days of the bid opening, the wage decision that is in effect on the date that the construction contract is signed is the decision that will be utilized for the entire project. The Labor Standards Officer must obtain an updated wage determination and notify the contractor and engineer or architect of the new wage decision that is applicable to the project. The Labor Standards Officer must maintain record of the new lock-in decision, revising the Wage Determination Lock-In Notice if that procedure is used by the grantee.
4. The construction contract must contain the final (“locked in”) wage decision and labor standards clauses required by DOL (HUD Form 4010).

Appendix 7-1: Wage Determination Lock-in Notice

## Section 7.5 Pre-Construction Requirements

### Pre-construction Conferences

Before any work is performed by a contractor, HCD requires that the grantee, the grant administrator, the engineer or architect, and any other technical advisors to the grantee conduct a pre-construction conference with the contractor, and any identified subcontractors, to explain contractual requirements and performance schedules.

The grantee should prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. (See Appendix 7-2: Sample Pre-construction Conference Checklist.) A tape recorder may be used to record the meeting and/or a stenographer may be asked to prepare notes. The grantee should clearly present the federal statutory compliance requirements as well as performance

Appendix 7-2:  
Sample Pre-  
Construction  
Conference Checklist



expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

Items that should be covered at the pre-construction conference include, but are not limited to:

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
- Obtain the contractor's Federal Identification Number and Data Universal Numbering System (DUNS) number that is registered in the System for Award Management (SAM).
- Explain that the contractor must submit weekly payrolls and statements of compliance signed by an officer of the company or person authorized by owner/officer, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors.

[DOL Payroll Form & Statement of Compliance \(WH 347\)](#)
- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contractors can request them using HUD Form 4230-A. However, the grantee must submit the form to the U.S. Department of Labor at [whd-cbaconformance\\_incoming@dol.gov](mailto:whd-cbaconformance_incoming@dol.gov).

[Report of Additional Classification and Rate \(HUD Form 4230-A\)](#)
- Explain that employee interviews will be conducted on-site during the project to ensure compliance prevailing wage requirements.
- Emphasize that both a copy of the wage rate decision and the wage rate poster "Employee Rights under the Davis Bacon Act" must be posted in clear view of all employees at the job site.

[Required Davis Bacon Contracting Poster](#)
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is registered and approved by the U.S. Department of Labor. In California, the state Department of Industrial Relations, Division of Apprenticeship Standards (DAS) and the California Apprenticeship Council (CAC) administer the registration of apprenticeship programs. If apprentices or trainees are to be used,



the contractor must provide the grantee with a copy of the state registration of their apprentice program and a copy of the apprentice card for the worker.

- Foremen or supervisors that spend more than 20% of their time performing covered construction work must be paid at least the prevailing hourly rate for the time spent performing such work.
- If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, including otherwise exempt salaried construction workers. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law.
- Indicate that failure to pay workers at least time and a half whenever overtime occurs violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) and makes the contractor liable for not only restitution but also liquidated damages of \$27 per day for every day each worker exceeded 40 hours a week without being paid time and a half. (The \$27 penalty amount is applicable as of January 16, 2021 and adjusts annually. See web link for current liquidated damages amount.)  
[CWHSS Liquidated Damages Penalty](#)
- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee. An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kickback" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.  
[40 USC Section 3145](#)
- Explain the possibility of federal debarment for violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.



- Provide contractor with posters for the site, including "Employee Rights under the Davis Bacon Act," as well as other worksite posters such as "Notice to All Employees Working on Federal or Federally Financed Construction Projects," "Safety and Health Protection on the Job," and "Equal Employment Opportunity is the Law." These posters are available via the DOL website. The website also contains a feature called "FirstStep Poster Advisor" that will help employers determine all posters that they are required to display at their business. Posters, available in English and other languages, may be downloaded free of charge and printed directly from the DOL website. Grantees should encourage contractors to communicate information regarding employee rights in a language they understand, by translation or interpretation of required posted materials.
- [CA Department of Industrial Relations Workplace Postings](#)

[Cal/OSHA Posters](#)

[DOL FirstStep Poster Advisor](#)

[DOL Workplace Posters](#)
- If the project will receive more than \$200,000 in CDBG or other HUD financial assistance, explain the contractors' requirements for Section 3 compliance. Detailed information on Section 3 is below and in Section 5.3 of this manual.
  - Inform the contractor that it is their responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions.
  - Provide handouts explaining everything covered and obtain the contractor's signature to document receipt in Pre-Construction Meeting Checklist (see Appendix 7-2 in section 7.5 above).
  - The grantee should also describe the compliance review that will be conducted during the project and indicate that discrepancies and underpayments discovered as a result of compliance review must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.



## Section 7.6. Certified Payroll Report Requirements

Once construction is underway, the general contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be found. This includes underpayments and potentially liquidated damages that may be assessed for overtime violations.

**NOTE:** A construction manager that executes the contracts with other construction firms is considered a general contractor. The references in this chapter to general contractor include such construction managers or construction management firms. These construction managers have the same responsibilities to comply with labor standards as a general contractor.

### Certified Payroll Reports

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance that include completed statements of how fringe benefits will be paid), and review them to ensure

[Payroll Falsification Indicators](#)

that there are no discrepancies or underpayments in accordance with HUD guidelines. See Payroll Falsification Indicators from the HUD Guidebook, Making Davis Bacon Work, for guidance on detecting falsification through frequent payroll review and interview comparison. If contractor/subcontractors use an approved apprentice or training program, verify that the ratio between trade journeymen and apprentices complies with the approved apprenticeship program.

Certified Payroll Reports must be submitted by the contractor to the grantee within seven to eleven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided can be found on the DOL website. This form is also commonly called a Certified Payroll Report (CPR). Note that an employee's full social security number

[DOL Payroll Form & Statement of Compliance \(WH 347\)](#)

and address are not to be included on these Certified Payroll Reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order



to determine compliance with applicable regulations. A Statement of Compliance must accompany each payroll submission.

Payroll reports must be reviewed by the grantee upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms must be initialed by the grantee to indicate that they have been reviewed.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- The correct classification of workers,
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination,
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay,
- Review of deductions for any non-permissible deductions, and
- The Statement of Compliance (part of the weekly Certified Payroll Report) has been completed and signed by the owner or an officer of the firm.

As a reminder, HUD Handbook 1344.1 is a good resource for labor standards information.

[HUD Handbook 1344.1](#)

Any discrepancies and/or willful falsification indicators resulting in underpayments of less than \$1,000 should be addressed by the grantee. Where underpayments of wages have occurred, the grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. As part of this process the grantee must request that the employer submit a Corrected Certified Payroll Report (Form WH 347) showing the restitution and a signed restitution form. Whenever an employer is found to have underpaid its employees by \$1,000 or more or committed willful falsification, grantees should contact HCD staff for assistance. See Taking Corrective Actions and Wage Restitution in Section 7.7 Labor Standards Compliance Requirements.

The contractor and subcontractor(s) must number and date each Certified Payroll Report.



The first week in which work is performed, the Certified Payroll Report must be marked 'Initial' or 1 and the last payroll report must be marked 'Final'. Contractor(s) and subcontractor(s) are required to submit a Certified Payroll Report for each consecutive week from the Initial Report to the Final Report. 'No work' Certified Payroll Reports must be submitted whenever there is a temporary break in the work on the project. If a contractor completes a portion of the work identified in his contract and is required to be off the job site for a period of time while project construction continues to the point where he can complete the remainder of the work identified in his contract, this contractor may submit a written statement to the grantee, signed by the owner or officer of the company that no work will be performed on the job site from Month, Day, and Year to Month, Day and Year. When this statement is received, the contractor is not required to submit weekly Certified Payroll Reports until their work on the project resumes.

All Certified Payroll Reports must have an original signature by the owner, or an owner designated representative. DOL has authorized the acceptance of certified electronic signatures. Please contact HCD for further guidance if you have contractors that wish to utilize electronic signatures.

**CAUTION:** Owner-operators of power equipment, like self-employed mechanics, may not submit their own payrolls certifying to the payment of their own wages but must instead be included on the responsible contractor's Certified Payroll Report.

### Fringe Benefits

The wage decision lists a minimum basic hourly rate of pay for each work classification. Some wage decisions also include fringe benefits, which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless the contractor is providing bona fide fringe benefits for employees. Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave. The cash equivalent of the fringe benefits provided may be added to the amount of the base wage with the total amount due reflected in the hourly rate column on the Certified Payroll Report.



**NOTE:** The total hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) you provide is less than the fringe benefit rate on the wage decision, you will need to add the balance of the wage decision fringe benefit rate to the basic rate paid to the employee. For example, if the wage decision requires \$10/hour basic rate plus \$5/ hour fringe benefits, you must pay no less than that total (\$15/hour) in the basic rate or basic rate plus whatever fringe benefit you may provide. You can meet this obligation in several ways: you could pay the base wage and fringe benefits as stated in the wage decision, or you could pay \$15 in base wage with no fringe benefits, or you could pay \$12 basic plus \$3 fringe benefits. You can also off-set the amount of the base wage if you pay more in fringe benefits such as by paying or \$9 basic plus \$6 fringe benefits; as long as you meet the total amount.

Paragraph (a) or (b) on the Statement of Compliance must be marked on every Certified Payroll Report to indicate the method by which fringe benefits will be paid. If the fringe benefits are being paid to a bona fide fringe benefit plan, the grantee must obtain verification from the contractors or subcontractors of the calculation of benefits paid and proof of plan validity. Bona fide fringe benefit plans are identified at 29 CFR4.171. Examples include but are not limited to:

**1. Health, life or other similar insurance premiums paid by the employer.**

Documentation includes:

- a. Most recent insurance statement with a breakdown of each covered employee's premium, and
- b. A signed letter by an officer of the company that states how much of the premium they cover (percentage or dollar amount).

**2. Pension or retirement contributions recognized by the Internal Revenue Service (IRS) and contributed by the employer.** Documentation includes

- a. Letter from Pension Provider stating which employees participate in the program,
- b. Signed letter by an officer of the company that states what percentage of contributions they match, or if it is automatically given to the employee even if they do not contribute, and
- c. Monthly statements throughout the project that show how much the employee contributed and how much the employer contributed.



3. **Holiday and/or vacation pay contributed by the employer.** Documentation includes:
  - a. Copy of Employee Handbook that states the number of paid vacation and holidays provided to employees and
  - b. Copy of employer's calculations for the amount of fringe benefit credit claimed for vacation and holiday pay listed by employee.
4. **Union Fringe Benefit Packages.** Documentation includes:
  - a. Copy of the Union Benefits Breakdown provided by each specific Union to the contractor, and
  - b. Monthly statement listing covered employees and verifying payment to the plan.

Fringe benefits do not include employer payments or contributions required by other federal, state, or local laws, such as the employer's contribution to Social Security or Workmen's Compensation. The grantee must verify that the base rate plus fringe benefit amount paid to each employee is equal to or greater than the amount stated in the wage determination assigned to the project. To determine the hourly amount of fringe benefits being paid by the contractor for the employee, the annual amount paid must be divided by 2080 hours.

## Section 7.7 Labor Standards Compliance Requirements

### General

During construction, the grantee is responsible for monitoring the labor standards and equal opportunity requirements described in this chapter. This role for the Labor Standards Officer may be fulfilled by the architect/engineer or grantee, and if so, should be included in the scope of services for that professional services contract.

[HUD's Davis-Bacon Forms](#)

### Labor Standards Requirements

Construction management requirements include conducting job site interviews with workers using Record of

[Record of Employee Interview \(HUD Form 11\)](#)



Employee Interview Form (HUD Form 11). HUD's website provides links to many of HUD's Davis-Bacon Forms.

The grantee should use on-site interviews as a proactive enforcement tool rather than as a means to meet a "representative sampling" quota. Instead of conducting interviews randomly for the sake of assembling a sample, the Labor Standards Officer is encouraged to target interviews to groups of workers where violations are suspected or alleged, being especially attentive to [Payroll Falsification Indicators](#).

The targeting approach is a more efficient and effective means of utilizing on-site interview resources. The Labor Standards Officer must also ensure that a sufficient sampling of all trades included in the project are interviewed. Grantees may target employees who may be most vulnerable to exploitation due to systemic inequities, such as people who speak languages other than English, people who work in low wage jobs, people who are not unionized, people who identify as Black or brown and/or LGBTQ+, and/or people living with disabilities.

The grantee should ensure the following actions are performed:

- Interviews are conducted periodically, following the protocols below, during each phase of construction on each project.
- Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage determination, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.
- A fully completed and signed Record of Employee Interview form is maintained in the contract file.

### Interview Protocols

The following guidelines should be observed by persons conducting job site interviews:

- The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process). If there is reason to suspect falsification or intimidation, the employee interview can be conducted by mail.



- The interviewer should see that the wage determination and other required posters are properly displayed.
- The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and subcontractors should be interviewed.

To initiate the interview, the authorized person shall:

- Properly identify themselves,
- Clearly state the purpose of interview, and
- Advise the worker that information given is confidential, and their identity will be disclosed to the employer only with the employee's written permission.

A grantee will need to seek language assistance to interview non-English speaking workers or may seek to gather information using the Labor Standards Questionnaire, HUD Form 4730, either in person or requesting it back by mail. The results from the questionnaire must be transferred to a Record of Employee Interview, HUD Form 11. When conducting employee interviews, the interviewer should pay particular attention to:

[Labor Standards Questionnaire Form \(HUD Form 4730\)](#)

[Record of Employee Interview \(HUD Form 11\)](#)

- The employee's full name.
- The employee's permanent mailing address.
- The last date the employee worked on that project and number of hours worked on that day.
- The interviewer should make it clear that these questions relate solely to work on the project and no other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage determination.

The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay. If it appears the individual may be underpaid, the interviewer should closely



question the worker:

- Ask for any records.
- Arrange to re-interview the employee.
- Enter the worker's statement of their classification.
- Observe duties and tools used:
  - Enter any comments necessary.
  - Enter date interview took place.

If the interviewer senses that the employee is reluctant to offer honest answers or appears to be under pressure from the employer about answering questions on the job site, the interviewer can provide or mail a questionnaire to gather information needed.

The payroll examiner must compare information on the Record of Employee Interview form with the Certified Payroll Report submission: If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form. If discrepancies do appear, appropriate action should be initiated. When the necessary action has been completed, the results must be noted on the interview form.

### Taking Corrective Action and Wage Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a Certified Payroll Report. Whenever an employer is found to have underpaid its employees by \$1,000 or more or committed willful falsification, grantees should contact HCD staff for assistance.

### Notification to the Prime Contractor

The Labor Standards Officer will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the



restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the grantee may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the Labor Standards Officer for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

### **Computing Wage Restitution**

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage determination for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

### **Correction Certified Payroll Reports**

The employer will be required to report the restitution paid on a Correction Certified Payroll Report. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6, or payrolls for a specified beginning date through a specified ending date). The Correction Certified Payroll Report will list:

- Each employee to whom restitution is due and their work classification,
- The total number of work hours,
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
- The gross amount of restitution due,
- Deductions, and
- The net amount to be paid.

A properly signed Statement of Compliance must be attached to the Correction Certified Payroll Report.



## Pay and Document Restitution Wages

The employer should pay and document payment of restitution wages. Appendix 7-3 contains instructions on paying restitution wages and an affidavit to be signed by workers receiving restitution wages.

Appendix 7-3:  
Restitution  
Wages & Affidavit

## Review of Correction Certified Payroll Report

The LSO or contractor administrator will review the Correction Certified Payroll Report to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental Correction Certified Payroll Report within 30 days.

## Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise cannot be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of restitution that could not be paid. After reasonable efforts to locate the workers are exhausted, the Grantee must turn over the gross amount due to any unfound workers to HUD. Grantees should contact HCD for repayment instructions.

## Section 7.8 Enforcement Reports

The U.S. Department of Labor regulations require all agencies administering labor standards to submit two reports. HCD coordinates the submission of those reports for CDBG grantees.

- Section 5.7 Enforcement Report: DOL requires a report regarding all enforcement actions where underpayments by a contractor or subcontractor occurred in excess of \$1,000 or where there is reason to believe that the violations were willful. Grantees, generally the LSO, must prepare and submit such reports called Section 5.7

[Section 5.7  
Enforcement Report](#)

[LR-92-02](#)

Enforcement Reports to HCD to then be forwarded to HUD. The Section 5.7 Enforcement Report should be submitted after completing an investigation and



after final disposition is reached at the local level. HUD has provided guidance on completing the report in Letter Number LR-92-02.

- Semi-Annual Labor Standards Enforcement Report: All enforcement activities, including any activities described in a Section 5.7 Enforcement Report AND enforcement activities that did not reach the threshold requiring a Section 5.7 Enforcement Report are listed and summarized in the semi-annual report. This report also lists all contracts that were issued during the six-month reporting period that are subject to Davis-Bacon wage decisions. This semi-annual report is sent to HCD.

[Semi-Annual Labor Standards Enforcement Report \(HUD Form 4710\)](#)

Labor standards reporting requirements are also referenced in *Chapter 10: Reporting and Recordkeeping*.

### Liquidated Damages for Overtime Violations

As mentioned previously, failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards Act (more than 40 hours per week) makes the contractor liable for liquidated damages of \$29 per day (updated annually) for every day each worker exceeded 40 hours a week without being paid time and a half. Grantees should contact their HCD staff for assistance if a violation occurs. See the web link for current CWHSS penalty amount.

[CWHSS Liquidated Damages Penalty](#)

### Section 7.9 Economic Opportunity Requirements During Construction

Economic Opportunity is different than the non-discrimination in hiring requirements described in *Chapter 4: Additional Grantee Requirements*. Section 3 of the Housing and Urban Development Act of 1968 requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.

For covered projects, Section 3 establishes benchmarks that the grantee must track and report. For construction activities, the grantee should develop procedures to track the following:



- Labor Hours: Total Labor Hours, Total Section 3 Worker Hours and Total Targeted Section 3 Worker Hours
- Employment and Job Training: New hires of Section 3 Workers and Targeted Workers
- Contracting for Construction: Total dollar amount of construction contracts and subcontracts with Section 3 Businesses

Entities seeking to confirm whether a worker meets the definition of Section 3 Worker or Targeted Section 3 Worker, or a business meets the definition of Section 3 Business should consult with the LSO or other project contact identified by the grantee or sub-recipient during the Pre-Construction Meeting.

Detailed information regarding provisions of Section 3 impacting a grantee's contracting and contractor hiring is discussed in *Chapter 5: Procurement, Section 5.3*.

### Section 7.10 Guidance & Best Practice

#### Installation Work

Construction, alteration, or repair work of more than \$2,000 that is financed in whole or in part with CDBG or other federal funds, regardless of the CDBG amount will trigger Davis-Bacon wage rates for the project. Installation work does not

[Appendix 7-4  
Construction versus  
Installation](#)

require payment of Davis-Bacon wage rates if it involves only incidental construction work. The applicability also may depend on the location of the incidental work. Appendix 7-4 provides additional clarification regarding construction versus installation to help determine whether Davis-Bacon wage rates must be paid for the work performed.

#### Reference Guide

It is recommended that the grantee shares a copy of the Davis Bacon Labor Standards: Contractor's Guide with the contractor (Appendix 7-2). This reference manual can be provided either at the pre-bidding conference (optional) or the pre-construction conference.

#### Labor Standards Documentation

While the following steps are not required, HCD recommends them as best practices to



facilitate labor standards compliance. If used, this documentation should be distributed when conducting the Pre-Construction Conference.

- The contractor should complete a State/Federal Wage Verification Form, listing each anticipated job classification and the required state and federal wage rates for the project. The grantee should review and approve to ensure compliance.
- Each contractor must also complete the Fringe Benefit Certification form to document all fringe benefit payments are to bona fide DOL-approved plans. The LSO must receive this document in order to review payrolls for compliance.
- The contractor will need to provide a current employee roster, listing all persons currently employed prior to the start of the project. The contractor should update this roster as work progresses and employment hires are made.

Appendix 7-5:  
Sample State/Federal  
Wage Verification Form

Appendix 7-6:  
Fringe Benefit  
Certification Form

The employee roster then can be used to cross check against future job opportunities for the project to determine completeness and accuracy of weekly payroll reports and if new hires were made to determine if Section 3 hiring goals are being achieved. The roster is also helpful determining random selection of employees for onsite or mail interviews and assisting in restitution payments when required.

### Interview Resource

When conducting interviews, administrators may choose to complete the Project Wage Rate Sheet found in HUD Form 4720. This form will facilitate interview questions with workers and completion of the required Record of Employee Interview.

[Project Wage Rate Sheet  
\(HUD Form 4720\)](#)

[Record of Employee  
Interview \(HUD Form 11\)](#)

## Section 7.11 California Prevailing Wage Requirements

California state law requires that, on public works projects, pay to workers must equal: *“the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate.”*



California's prevailing wages are determined by the Director of the Department of Industrial Relations (DIR). The director sets the prevailing wage rate according to "collective bargaining agreements and rates predetermined for federal public works, within the locality and the nearest labor market" under [California Labor Code § 1773](#).

Public works projects are construction projects financed by the government for the benefit or use of the general public. A more detailed definition can be found in [California Labor Code § 1720](#).

Grantees are responsible for compliance with all state prevailing wage requirements when Davis Bacon is not applicable.

For additional information regarding the State prevailing wage law and rates contact the California Department of Industrial Relations at (844) 522-6734. State Prevailing Wage rates can also be requested through the DIR web site at : <https://www.dir.ca.gov/public-works/prevailing-wage.html>.