



U.S. Department of Housing
and Urban Development

Labor Relations Desk Guide
LR01.DG

MAKING **DAVIS-BACON** WORK

*A Practical Guide
for States, Indian Tribes
and Local Agencies*



*September 2011
Previous versions obsolete*

**HUD LABOR STANDARDS
ADMINISTRATION
&
ENFORCEMENT**

**A Practical Guide for States,
Indian Tribes and Local
Agencies**

Revised September 2011

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HUD Labor Standards Administration and Enforcement

This Guide has been developed as part of HUD's communications strategy with you and its approximately 5,000 client agencies. It has been designed to help you develop organizational and administrative approaches which best work for you while still enabling you to meet your labor standards contractual responsibilities in the administration of HUD-assisted programs as efficiently as possible. It will also be useful to you as a training tool and ready reference for compliance staff. While this Guide is intended to address numerous situations, it was not written to cover every possible labor standards issue. If there is a labor standards issue not addressed in this Guide, please contact your local HUD Labor Relations Field Staff. Throughout this Guide, the acronym "LCA" or "LCAs" shall mean state, tribal and local agencies.

Whom to contact...

The HUD Labor Relations Field staff is your support team and is available to provide training and technical assistance in the administration of HUD programs subject to Federal labor standards provisions. Please call upon the HUD Labor Relations Field staff for your jurisdiction at any time. Also, please visit the Office of Labor Relations at: <http://www.hud.gov/offices/olr/>.

At this site you will have ready access to publications, forms, the latest policy letters, and related links which will help you administer labor standards. Most of the publications and forms referenced in this Guide are available in the Labor Relations Library at our website (above).

You can also obtain additional copies of this Guide and other publications by telephone from HUD's Customer Service Center at (800)767-7468.

The Basics

The Office of Labor Relations (OLR) has identified five **Key Labor Standards Objectives** - the basics of what must be accomplished in order to protect workers' rights. We also identified all of the policies, procedures and paperwork at our disposal - what we do ourselves and what we impose on contractors. HUD eliminated superfluous requirements and will not institute policies, procedures or paperwork that are not required by statute or regulation, or that do not contribute to one or more of the Key Objectives.

Key Labor Standards Objectives

1. **Apply Davis-Bacon requirements properly.** Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure any exemptions or exceptions are identified.
2. **Through education and advice, support contractor compliance with labor standards.** Provide basic training and technical support to contractors to ensure they understand their obligations under prevailing wage and reporting requirements.
3. **Monitor contractor performance.** Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.
4. **Investigate probable violations and complaints of underpayment.** Thoroughly explore any evidence of violations, especially allegations of underpayment.
5. **Pursue debarment and other available sanctions against repeat labor standards violators.** Carry out a no-tolerance policy toward contractors who violate prevailing wage laws.

LCA Responsibilities for Davis-Bacon Labor Standards

State, tribal and local contracting agencies (LCAs) that administer HUD programs agree to administer and enforce Davis-Bacon requirements as a condition for receiving HUD program assistance. LCAs have the following responsibilities:

1. **Designate appropriate staff** (e.g. a *Contract Administrator*) before the start of construction 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 Field Office of Labor Relations.
2. **Establish a construction contract management system** which meets the standards of Part 85 (24 CFR - HUD regulations), Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.
3. **Ensure all bid documents, contracts and subcontracts contain the applicable Davis-Bacon wage decision and Federal labor standards provisions.**
4. **Ensure no contract is awarded to a contractor that is ineligible** (e.g., debarred) for Federally-assisted work.
5. **Conduct on-site inspections including interviews with laborers and mechanics** employed on the construction project. Ensure that the applicable Davis-Bacon wage decision and DOL's Davis-Bacon poster (Form WH-1321) are displayed at the job site.
6. **Review certified payroll reports and related documentation.** Identify any discrepancies and/or violations. Ensure any needed corrections are made promptly, including the payment of wage restitution, as needed, and the assessment and collection of liquidated damages, as appropriate.
7. **Maintain full documentation** of Federal labor standards administration and enforcement activities.
8. **Refer potential criminal or complex enforcement actions to HUD**, in addition to Contract Work Hours and Safety Standards Act (CWHSSA)

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liquidated damages assessments for overtime violations and debarment recommendations.

9. **Comply with all HUD requirements** concerning statutory, program and/or other requirements.
10. **Prepare Federal labor standards enforcement reports** as required in U.S. Department of Labor (DOL) regulations (29 CFR Part 5, Section 5.7).

What LCAs Need to Carry Out These Responsibilities

In addition to basic knowledge about labor standards administration and enforcement, LCAs need basic reference and guidance materials. Many of these materials are available on-line. A complete list of website addresses referenced in this Guide is provided in the Appendix (page 51). Also, the HUD Labor Relations Field Staff can assist you in obtaining hard copies of any materials offered in the Labor Relations Library on the HUD Homepage.

Labor Relations Reference and Guidance Materials

1. **Specific Davis-Bacon Related Act (statute)** for the program involved. The clauses containing the Davis-Bacon labor standards provisions for each HUD program are key to making proper decisions concerning applicability. Determining whether Davis-Bacon wage rates are applicable in specific cases may be the most difficult task LCAs face on a day-to-day basis. Excerpts from the HUD Related Acts - the labor standards provisions – are offered in the Appendix (page 23) to this Guide. In addition, we've provided treatments explaining the factors of applicability (how the language of the labor standards clauses is interpreted and applied in real situations) for CDBG, HOME, Public Housing, Indian Housing, and Hawaiian Homelands Programs.
2. **HUD regulations: 24 CFR**, relevant Parts for the program involved. Many times the regulations will contain further information about Davis-Bacon aspects of the program. HUD regulations are available on-line at: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>
3. **DOL regulations: 29 CFR**, Parts 1, 3, 5, 6 & 7. These regulations contain policy guidance and instructions for all agencies, including local contracting agencies, in the administration and enforcement of Davis-Bacon wage and reporting requirements. These DOL regulations are available on-line at the DOL homepage at: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>
4. **Labor Relations Letters**. This special directives series is designed to provide current and thorough guidance on Davis-Bacon issues in HUD programs. Popular topics include Davis-Bacon applicability under HOME, and prevailing wage requirements concerning self-employed laborers and mechanics. Labor Relations Letters are available on-line at the Labor Relations Library.

5. **Labor Relations Desk Guides.** These Guides compliment the guidance and instructions provided in HUD Handbook 1344.1, Federal Labor Standards in HUD Programs. This Guide is for LCAs. Another is HUD's *Contractor's Guide to Prevailing Wage Requirements for Federally-assisted Construction Projects* - an easy to use resource that explains Davis-Bacon requirements and what contractors must do to comply. These Guides are also available at the Labor Relations Library.

6. **On the Mark!** This series is also available at the Labor Relations Library. The series contains simple, one-page suggestions containing time-saving tips to improve efficiency and effectiveness including new technologies and services available through the internet.

Labor Standards Administration

Labor standards administration involves the activities that take place primarily before construction begins. Administration sets the stage for the compliance activities that occur during the construction phase.

1. **Determine Davis-Bacon applicability.** The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Applicability (see Appendix, page 23) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon but there are some exceptions. The best and safest approach is to assume that Davis-Bacon requirements will be applicable whenever the contract/project involves construction work valued in excess of \$2,000, *then* look more closely to see if there's any reason for non-coverage.

Assuming a determination has been made that Davis-Bacon wage and reporting requirements are applicable:

2. **Prepare the bid documents/contract.** The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and labor standards clauses. These should be bound into the contract specifications or incorporated by specific reference in the bid/contract documents (see *Labor Relations Letter 96-03*).
 - a. **Davis-Bacon wage decisions.** The Davis-Bacon wage decision is a listing of various construction work job classifications (such as Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates (and fringe benefits, where prevailing) people performing work in those classifications must be paid. (See the Appendix, page 35, for more information regarding wage determinations and for information on how to add trade classifications not already on a wage decision.)

Wage Determinations On-Line (<http://www.wdol.gov>) is the *only* official source to obtain wage determinations issued by DOL for construction contracts subject to the Davis-Bacon Act (DBA) and Related Acts (DBRA).

After logging on to *wdol.gov* (user names and passwords *are not* required), click "Selecting DBA WDs" in the "Davis-Bacon Act" column.

“Selecting DBA WDs” connects users to a searchable database of current Davis-Bacon general wage determinations.

The “WDs due to be revised” link connects users to information identifying specific wage determinations that will be revised/modified in the near future. This information alerts contracting agencies of upcoming revisions to wage determinations that they may need to incorporate into bid solicitations and/or contracts.

The “Sign up for alert service” provides email alerts concerning updates for wage determinations that may be needed for upcoming procurement actions. The alert service is specific to a wage decision(s) and can be found on the first page of any current wage decision(s) that is retrieved at *wdol.gov* (see bottom left for the link).

b. **Labor standards clauses.** The labor standards clauses (*aka*, labor standards provisions, stipulations) obligate the contractor to comply with Davis-Bacon wage and reporting requirements and with the overtime provisions of the Contract Work Hours & Safety Standards Act (applicable only when the prime contract is valued at over \$100,000). The labor standards clauses also provide remedies and sanctions should violations occur. HUD has standard forms containing the labor standards clauses appropriate for different programs: the HUD-4010 for CDBG and HOME; and the HUD-5370 and HUD-5370-EZ for Public and Indian housing. These forms are available on-line at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administratio n/hudclips/forms

- 3. Verify contractor eligibility.** Once you have selected the contractor to whom you want to award the contract, you must verify that the contractor is not ineligible (e.g., debarred) from participation in Federal programs. You only need to verify the eligibility of the prime contractor. The U.S. General Services Administration maintains a list of ineligible contractors which can be accessed on-line at: <https://www.epls.gov> (See *On the Mark!* OTM #6 (6/97) for more information about on-line verification.)
- 4. Provide contractor training.** Make certain the contractor understands its responsibilities for Davis-Bacon compliance: The principal contractor (also referred to as the ***prime or general contractor***) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. HUD has published a ***Contractor’s Guide to Prevailing Wage***

Requirements for Federally-Assisted Construction Projects for this purpose. This Guide provides basic information and instructions to contractors concerning Davis-Bacon wage and reporting requirements. Hard copies of the Guide are available from the HUD Labor Relations Field Staff. In addition, the Guide is available in a download-able pdf file at the HUD Labor Relations Library.

You may also wish to provide formal training separate from the contracting process for contractors who are interested in performing work on your HUD-assisted contracts and want to learn more about what is involved.

Labor Standards Enforcement

Labor Standards Enforcement involves the activities that take place during construction to ensure contractor compliance. Enforcement of federal labor standards involves certain compliance principles (see Appendix, page 38) applicable to almost every Davis-Bacon – covered project. Adhering to these principles will promote effective LCA contract compliance.

1. **Posting the wage decision and Davis-Bacon poster.** The contractor is required to display on the job site a copy of the applicable Davis-Bacon wage decision and Department of Labor Form WH-1321, *Davis-Bacon Poster*. The purpose of this posting is to provide information to the construction laborers and mechanics working on the project about their entitlement to the prevailing wage for their trade, and to advise them whom to contact (the contract administrator) if they have any questions or want to file a complaint.
 - a. **Project Wage Rate Sheet (HUD-4720).** Many wage decisions are multi-paged and cover several counties and/or more than one type of construction. To make this vital information easier to read and understand, contract administrators can offer a Project Wage Rate Sheet (HUD-4720) - a one-page listing of only the wage rates applicable to the specific project involved - for posting on the job site. This form is available in an on-screen fillable format which can be accessed via the HUD Forms or Office of Labor Relations websites.
 - b. **Davis-Bacon Poster.** The Davis-Bacon Poster is available in English and Spanish via the DOL website. The poster in English is at <http://www.dol.gov/whd/programs/dbra/wh1321.htm>. The link to the poster in Spanish is <http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>. Both versions can be accessed via the Labor Relations website.
2. **Conduct on-site interviews with laborers and mechanics.** The contract administrator or a designee (such as an agency construction inspector) must periodically conduct interviews with the construction workers on the job site. The purpose of the interviews is to capture observations of the work being performed and to get the workers' views on the number of hours they work, the type of work they perform and the wages they receive. Information gathered during the interviews is recorded on Form HUD-11, Record of Employee Interview. Completed HUD-11s must be compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information. HUD-11 forms are available on-line in English and in Spanish in a fillable format via the HUD Forms website and at

the OLR website.

3. **Review contractor and subcontractor certified payroll reports.** In addition to comparing HUD-11s to the certified payroll reports, the contract administrator reviews the payroll reports generally to ensure all laborers and mechanics are being paid no less than the wage rates contained on the applicable Davis-Bacon wage decision for the classification of work they perform. Contract administrators should be particularly alert for indications of payroll falsification - misinformation on payrolls to conceal underpayments. Falsification on payrolls indicates a contractor or subcontractor is aware of its obligations, is knowingly underpaying its employees and is attempting to avoid detection of the violations.
 - a. **Discrepancies and/or underpayments on the payrolls.** Some underpayments and other errors can appear on the face of the payroll records (i.e., do not involve falsification). In these cases, the contract administrator contacts the employer and/or prime contractor and provides instructions as to what steps should be taken to correct the payroll records and to pay any back wages that may be due to the affected workers.
 - b. **Indications of falsification on payrolls.** The greatest threat to construction workers entitled to statutorily-mandated prevailing wage for their craft is from employers who know what is required, choose not to pay the required prevailing wage rates and falsify certified payroll reports to conceal the underpayments. Such willful violators see the workers' underpayment as their own gain and engage in deception to increase this gain. In addition, willful violators that successfully escape detection and are not required to pay prevailing wages will continue to bid on Davis-Bacon contracts until their violations are disclosed and administrative sanctions such as debarment are imposed.
 - c. **Falsification indicators.** HUD has prepared a list and explanation of four common falsification indicators that are detectable during payroll "spot-checks." Information reported on payrolls that indicate falsification suggests willful, much more serious violations in terms of the amount of back wages that may be due and the number of employees affected. Such cases most often warrant investigation which can include on-site interviews, mailing questionnaires to employees, taking written statements or complaints, and other methods to gather and assess the facts of the case. See the Appendix (page 44) to this Guide for an explanation of willful violations and falsification indicators.
4. **Require the correction of all discrepancies, the payment of wage**

restitution found due, and the assessment and collection of CWHSSA liquidated damages, as appropriate. Contract administrators must ensure the full correction of all discrepancies disclosed during compliance monitoring conducted by the LCA, HUD or DOL. This includes the collection of documentation to demonstrate that corrective measures have been successfully completed.

5. **Examine and resolve probable violations and complaints of underpayment.** Contract administrators must explore probable violations – particularly those involving falsification of payrolls and complaints alleging underpayments. In addition to the HUD-11, Record of Employee Interview, HUD has developed a questionnaire form (HUD-4730) and a complaint intake form (HUD-4731) for HUD and LCA use. The forms are available in on-screen fillable formats at the HUD forms website and via the Labor Relations website.
6. **Refer complex issues and/or falsification cases to HUD or DOL.** Some issues may be more complex than you are able to address. HUD encourages LCA to consult with the Labor Relations Specialist for their area to secure appropriate guidance and support. HUD has decided, in consultation with DOL, that it will refer to DOL cases involving falsification of payrolls or related documents for DOL investigation. HUD *strongly* suggests that LCAs employ this strategy for cases involving falsification. Contact the HUD Labor Relations Specialist for your area for more information and guidance on such referrals.
7. **Take steps to ensure the full resolution of any monetary liability that has or may be imposed for labor standards reasons.** Contract administrators must take prompt action to ensure that funds will be available to satisfy any labor standards liability that may be imposed. Actions include withholding from contract payments due to the contractor and requiring funding for an escrow account to guarantee the satisfaction of any restitution and/or liquidated damages assessment that may be pending at contract close-out.
8. **Recommend debarment against repeat violators.** HUD has implemented a no-tolerance policy against contractors who are repeat violators of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CWHSSA liquidated damages (for overtime violations) which may be assessed. In addition, the employer must provide written assurance of future compliance. If the employer promptly completes these corrective actions, HUD will not object if the LCA *does not* recommend debarment against the employer unless there are extenuating circumstances which warrant debarment. If the employer is found in violation again, the LCA must require

full correction of any underpayments and payment of CWHSSA liquidated damages assessed. A debarment recommendation made by the LCA against the employer is expected.

9. **Prepare and submit enforcement reports.** In accordance with DOL regulations (29 CFR Part 5, Section 5.7), the contract administrator must prepare and submit to HUD an enforcement report in any case where an employer (contractor or subcontractor) has underpaid its employees by \$1,000 or more, or where there is reason to believe the violations are aggravated or willful; and prepare and submit to HUD semi-annual enforcement reports concerning all Davis-Bacon labor standards administration and enforcement activities involving all HUD-assisted programs.
 - a. **Employer-specific enforcement reports.** These enforcement reports are used for three general purposes. First, to report to the Secretary of Labor on Davis-Bacon enforcement actions successfully completed in the field by all federal, state and local agencies. Secondly, we use an enforcement report to refer to the Wage and Hour Administrator investigative findings which are in dispute (e.g., where the employer contests findings of underpayment made against it and requests a hearing to appeal the findings). Thirdly, we use an enforcement report to make recommendations for debarment and other sanctions and for recommendations concerning liquidated damages computed for CWHSSA overtime violations. (See *Labor Relations Letter LR-92-02* for additional guidance concerning employer-based enforcement reports.)
10. **Semi-annual Enforcement Reports.** In April and October of each year, all federal agencies must report to DOL on all covered contracts awarded, and on all enforcement actions taken during the relevant 6-month period. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all HUD-assisted Davis-Bacon construction activity. A copy of the Semi-Annual Report form (HUD-4710) and instructions (HUD-4710i) for LCAs and are available at HUDClips and at the Labor Relations Library at www.hud.gov/offices/olr. The report may be completed on-screen, saved and attached to an email message for submission purposes. *NOTE:* States may report directly to DOL, as the state chooses. Public Housing Authorities, Indian Housing Authorities and Tribally-designated Housing Agencies should send data for Davis-Bacon - projects *only*; do *not* include data relating to HUD-determined maintenance wage rate projects, or projects subject to Tribally-determined wage rates (for construction or maintenance work).

LCA Flexibility for Labor Standards Responsibilities

While some aspects of labor standards administration are inflexible, such as which wage decision is applicable to a specific project, the following aspects are not. For these, HUD leaves the preference of how to achieve end results with the LCA.

1. **LCAs may obtain wage decisions directly from *wdol.gov*.** HUD expects that LCAs have the capacity to select the correct Davis-Bacon wage decisions from the *www.wdol.gov* web site for most projects they will undertake and to determine whether the wage decision is current for the appropriate lock-in date. LCAs that wish to continue obtaining wage decisions from HUD can make the request by telephone, fax, mail or email. HUD can send the applicable wage decision back to the LCA by any of these means also. LCAs can obtain wage decisions immediately from the *wdol.gov* website and, in most cases depending on the form of delivery requested by the LCA (e.g., email), LCAs should be able to obtain wage decisions from HUD within 24 hours or less.
2. **Preconstruction Conferences for labor standards purposes are optional.** HUD acknowledges there are many good reasons to hold a preconstruction conference (PCC) such as discussing construction inspections, progress and contractor payment requirements, Section 3 employment and training and other issues particular to the project. However, HUD has determined that the time and resources used to conduct and document PCCs for labor standards purposes do not yield measurably better results.

Many contractors have prior Davis-Bacon contract experience and have demonstrated successful performance. These contractors don't require the repetitive basic training such as provided at most PCCs. Basic training for contractors new to Davis-Bacon projects can be provided more efficiently through printed material such as HUD's *Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*. Contractors who intend to comply can become familiarized with the fundamentals through the Guide and can contact the contract administrator concerning any questions specific to the project. Contractors who understand the requirements and who choose *not* to comply, will in all likelihood not be persuaded to fully comply just because they attended a PCC.

3. **Project Wage Rate Sheets may be offered for Davis-Bacon projects.**

Davis-Bacon wage decisions are incorporated into the construction contract to obligate the full compliance of the prime contractor and any subcontractors. There are three important uses for the applicable Davis-Bacon wage decision. One is for the contractor's and subcontractors' understanding about the specific wage rates that must be paid. The second is for posting at the job site so that the laborers and mechanics know what they are supposed to be paid. The third is for contract administrator's use in reviewing certified payroll reports. A Project Wage Rate Sheet (HUD-4720) is a one-page, easy to read listing of the work classifications and wage rates that are applicable to the project. This one-page listing is much more user-friendly than the full-text wage decision for these three uses:

- a. A Project Wage Rate Sheet spells out more clearly the work classifications and wage rates contained in the wage decision for the contractor and subcontractors.
- b. A Project Wage Rate Sheet is much easier for laborers and mechanics to understand so that they can determine whether they are paid properly.
- c. A Project Wage Rate Sheet - a one-page listing - is more helpful as a ready reference for contract administrators reviewing payroll reports.

LCAs can prepare a Project Wage Rate Sheet for contracts using the on-screen fillable versions in either the HUD Forms or Office of Labor Relations websites. The Project Wage Rate Sheet should be prepared **only** after the wage decision has been "locked-in" by contract award or start of construction, as applicable. HUD Labor Relations staff is available to provide assistance to LCAs in preparing Project Wage Rate Sheets. HUD *strongly* recommends incorporation of the full wage decision text into bid solicitations and contracts, either in hard-copy or by specific reference. (See also *Labor Relations Letter LR-96-03*.)

4. **LCAs may develop their own labor standards file system.** HUD believes that LCAs can best determine how to maintain their files provided that certain minimum requirements are met. The minimum requirements include compliance with DOL regulations that certified payrolls and basic records relating to the payrolls are preserved not less than three years after completion of the project and the resolution of any enforcement actions which may carry over after completion. In addition, the files must be maintained in such a way that the LCA can utilize them to demonstrate its own compliance with its labor standards administration and enforcement responsibilities. For example, the LCA must, at HUDs request, demonstrate how it has

documented that the eligibility of the prime contractor was verified for each contract.

5. **LCAs may target on-site interviews with laborers and mechanics.** HUD is interested in using 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, LCAs are encouraged to target interviews to projects or groups of workers where violations are suspected or alleged. In this way, on-site interviews can be used to support a specific on-going enforcement action(s). HUD realizes that this approach may mean that less on-site interviews may be conducted randomly; and HUD considers targeting a far more efficient and effective means of utilizing on-site interview resources.
6. **Payroll reviews may be limited to spot-checks and HUD-11 comparison; the Goal: to detect falsification.** HUD believes that serious violations involving underpaid workers and significant wage restitution may be overlooked because the contract administrator is over-tasked with HUD-mandated payroll review minutiae. HUD recognizes that it is not possible to conduct 100% payroll reviews; therefore, it is not possible to identify and correct every discrepancy and underpayment. It is also the case that the violations disclosed behind falsified payrolls are much more egregious (both in terms of affected workers and the amount of underpayment) than violations that appear on the face of the payroll records. Accordingly, HUD has prioritized payroll reviews so that the objective is to detect falsification and so that our enforcement activities will yield the greatest impact. HUD has developed guidance on how to detect falsification through spot-checks and HUD-11 interview comparison. (See *Willful violations/Falsification Indicators* in the Appendix, page 44.)
7. **Routine payroll review results may be communicated to the prime contractor by telephone and documented with a record to the file.** Many times, the types of deficiencies which come to the attention of the contract administrator can be handled more efficiently and just as effectively with good informal communication (e.g., a telephone call, email, etc.) with the employer/prime contractor rather than with formal letters. Examples of the types of issues that could easily be addressed informally - assuming the cooperation of both sides - include a missing payroll report or missing apprenticeship certificates, requests for employee authorizations for deductions, small underpayments that appear on the face of the payroll, and similar matters. With the prime contractor’s cooperation, these matters can be disposed of quickly with a telephone call and a brief note to the contract file documenting the call. If the employer/prime contractor does not respond

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appropriately to this type of communication, it may be necessary to resort to more formal means.

Appendices

Labor Law Synopses

Davis-Bacon Act (DBA). The Davis-Bacon Act is applicable to contracts in excess of \$2,000 for construction, alteration or repair, including painting and decorating, of public buildings and public works to which the federal government or District of Columbia is a party. The DBA requires (in part):

1. Payment of no less than wages (including fringe benefits) prevailing in the locality on projects of a similar character as determined by the DOL.
2. Payment of wages not less often than once per week.
3. Posting of the applicable wage decision at the job site.
4. Other statutes (Davis-Bacon Related Acts, *aka* DBRA) contain provisions that impose Davis-Bacon wage requirements on projects/contracts that are funded or assisted (rather than contracted for directly) by federal agencies or the District of Columbia. HUD program legislation frequently contains such provisions and are, therefore, Davis-Bacon Related Acts.

Copeland (anti-kickback) Act (CA). The Copeland Act is applicable to contracts/projects subject to Davis-Bacon wage requirements. The CA (in part):

1. Regulates deductions that may be taken from employee earnings.
2. Requires the certification, submission and retention of weekly payroll reports.
3. Prohibits “kickbacks” from employee earnings.
4. The anti-kickback prohibition is *not* applicable where the nature of federal assistance is only insurance or a loan guarantee. **All** programs implemented by LCAs are subject to the anti-kickback provision of the CA.

Contract Work Hours and Safety Standards Act (CWHSSA). The Contract Work Hours and Safety Standards Act is applicable to prime contracts valued in excess of \$100,000. Any contracts subordinate to a covered prime contract are likewise covered. CWHSSA (in part):

1. Mandates premium pay (time and one half on base wages, plus any fringe benefits) for all hours worked on the site of the covered work in excess of 40 hours per week.

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2. Requires premium overtime pay only when *all* hours considered under CWHSSA overtime requirements – 40 hours plus additional (O/T) hours – are performed on CWHSSA-covered site(s) of work.
3. Includes watchmen and guards in the classes of workers entitled to premium overtime pay requirements.
4. Imposes liquidated damages at the rate of \$10 per day/violation - any instance where an employee works in excess of 40 hours per week on a daily basis, In addition to full wage compensation.
5. Is *not* applicable to projects/contracts where the nature of federal assistance is only insurance or a loan guarantee. **All** programs implemented by LCAs are subject to the overtime provisions of CWHSSA.

HUD Program Davis-Bacon Related Acts (DBRAs) and Factors of Applicability

Programs administered by LCAs

The five programs described in this section are those which have been funded annually since their inception. Other funding that has Davis-Bacon implications is provided via existing or new HUD programs from time-to-time to respond to special situations such as natural disasters. Please contact the Office of Labor Relations staff for your jurisdiction for information regarding the requirements for HUD programs not listed in this section.

Housing and Community Development Act of 1974, as amended (HCDA); Section 110* (CDBG, NSP, Section 108, EDI/BEDI)

HCDA (Title I) statutory language:

- (a) All laborers and mechanics employed by contractors or 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.... *Provided*, that this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units....
- (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.

* Section 107(e) (2) of the HCDA permits the Secretary of HUD to waive the provisions of Section 110 in connection with grants to Indian tribes. This waiver action was taken and can be found in HUD regulations at 24 CFR 1003.603.

HCDA Factors of Applicability:

1. **...construction work financed...** HCDA funds (e.g., CDBG) can finance activities other than construction work which do not trigger Davis-Bacon requirements; e.g., *real property acquisition, purchase of equipment, architectural and engineering fees, other services (legal, accounting, construction management), other non-construction items (furniture, business licenses, real estate taxes, tenant allowances for such items).*

Also, financing is not limited to the act of paying for the construction work directly. Financing can mean, for example, using CDBG assistance to pay the interest charged or to reduce the interest rate on a construction loan (*including certain collateral accounts*). Generally, “financing” also means using HCDA funds to provide permanent financing (take-out loan) following construction.

2. **...in whole or in part...** If HCDA funds finance only a portion of a construction work, labor standards are applicable to the *entire* construction work.
3. **All laborers and mechanics employed by contractors or subcontractors...** Labor standards provisions *do not* apply to employees of the grantee (force account workers) that may be engaged on an otherwise covered project. *Note: The construction work is covered but these force account workers are excluded.*
4. **...shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.** Typically, single-family homeowner properties are excluded under this exemption. For example, a contract to rehabilitate any number of single family properties for homeownership is not covered by Davis-Bacon. 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 include:
 - a. 5 townhouses side-by-side which consist of 2 units each.
 - b. 3 apartment buildings each consisting of 5 units and located on one tract of land.
 - c. 8 single-family (*not* homeowner) houses located on contiguous lots and operated as a single rental property.

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 construction was not an eligible activity. However, subsequent changes to the statute now permit the use of CDBG (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.

National Affordable Housing Act of 1990 (NAHA); Section 286 (HOME):

NAHA statutory language:

(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..., shall be paid to all laborers and mechanics employed in the development of affordable housing involved,....

(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.

NAHA (HOME) Factors of Applicability:

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 down payment assistance to individual homebuyers. [LCAs should refer to HUD's HOME regulations (24 CFR 92.354(a)(2)) or consult with HUD Labor Relations Staff if their project involves down payment assistance to homebuyers.]

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, we use 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:
 - a. 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.*)
 - b. 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 Sec. 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.

U.S. Housing Act of 1937, as amended (USHA); Section 12* (Public Housing/Section 8):

(a) Any contract for loans, contributions, sale, or lease pursuant to this Actshall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., 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 loans, 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.

* Section 12(a) of the USHA also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of PHA low-income housing projects.

USHA (PHA/Sec 8) Factors of Applicability

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 means the Annual Contributions Contract (ACC) between HUD and the respective PHA. (Be aware that “contract” has other relevance, some not germane to LCAs and this Guide.) Prevailing wage applicability is *not* tied to a funding source nor to a specific use of funds. This means that federal

funding for development work is not a prerequisite to Davis-Bacon requirements 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 the “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. (See *Labor Relations Letter 2004-02.*)

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.

Native American Housing Assistance and Self-Determination Act of 1996, as amended, (NAHASDA); Section 104(b)*:

(1) IN GENERAL. Any contract or agreement for assistance, sale, or lease pursuant to this Act...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.

* Section 104(b)(1) of NAHASDA also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of NAHASDA-assisted affordable housing projects.

NAHASDA (TDHE/IHA) Factors of Applicability

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 wage provisions) shall not apply to any contract or agreement..., 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 the prevailing¹ 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.*)

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.

5. Sweat Equity.

HUD has concluded that, consistent with a provision in the USHA (predecessor to NAHASDA), family members providing sweat equity labor for

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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.*)

Housing Assistance for Native Hawaiians, Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, (NAHASDA); Section 805(b)*:

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

* Section 805(b)(1) also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of NAHASDA-assisted affordable housing projects.

NAHASDA (Native Hawaiian Housing): Factors of Applicability

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, 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.*)

Davis-Bacon Wage Determinations

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.

It is critical that the applicable Davis-Bacon wage decision and federal labor standards provisions are incorporated, either by hard-copy or by specific reference, into the bid specifications and contract for each project subject to Davis-Bacon requirements.

Character of work. Davis-Bacon wage decisions are established for four (4) broad categories (characters) of construction work (see also *All Agency Memoranda 130 and 131*, available at wdol.gov):

1. Residential: Construction, rehabilitation or repair of single family homes and apartment buildings no more than 4 stories, including incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.
2. Building: Construction, rehabilitation or repair of apartment buildings great than 4 stories, sheltered enclosures with walk-in access for the purpose of housing people, machinery, equipment or supplies.
3. Highway: Construction, rehabilitation or repair of roads, streets, highways, sidewalks, parking areas and most other paving work not incidental to residential, building or heavy construction.
4. Heavy: A “catch-all” category which includes those projects which cannot be classified as “residential”, “building”, or “highway”. Examples include dredging, sanitary and storm sewers, water mains and supply lines, dams, and flood control projects.

General wage decisions. General wage decisions are published for specific characters of work and by geographic location, usually a county or group of counties. General wage decisions are available on-line at wdol.gov.

General wage decisions may be modified from time-to-time to keep them current. Modifications are listed numerically on the wage decision modification record (found on the first page of the wage decision). A modification may change one or more, or all work classifications and/or wage rates, however each modification replaces the preceding modification in its entirety. For example, Modification #4 to a wage decision completely replaces Modification #2 of that wage decision.

Selecting the correct wage decision. LCAs must select the correct wage decision for each project. The correct wage decision is that which is current (i.e., the current modification of that wage decision) and that is applicable based on the character of the work and the geographic location. The appropriate location is generally the county in which the project/construction work will be physically located when completed. Contact the HUD Labor Relations Specialist if there is *no* published general wage decision appropriate for the proposed work.

Wage decision “effective” dates. Wage decisions “lock-in” (i.e., become effective) for each covered project based upon bid opening, contract award or start of construction (see 29 CFR Part 1). After “lock-in”, the wage decision is “frozen” for the duration of the construction work, i.e., the wage decision for the project is no longer subject to modification. Wage decisions for most LCA projects will “lock-in” at contract award or start of construction if there is no award *except:*

1. For contracts entered into pursuant to competitive bidding, the wage decision will “lock-in” on the bid opening date *provided* that the contract is awarded within 90 days.
2. If the contract is not awarded within 90 days, the wage decision must be updated as of the date of award.
3. Modifications that are published 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. If so, a record of the finding must be made to the contract file.

Conformances (additional classifications). At times, the wage decision will not contain some of the work classification and wage rates that will be needed for the construction work. In these cases, HUD may approve an additional classification(s) and wage rates(s) for use on the project, subject to a final decision by DOL.

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1. A request for additional classification and wage rate may be made *only* after contract award. The request must originate with the contractor/employer and must be submitted by the LCA to the HUD Labor Relations Specialist.
2. An additional classification and wage rate will be approved by HUD where:
 - a. The requested work classification is used in the area of the project by the construction industry;
 - b. The work that will be performed is not performed by a work classification already contained in the wage decision;
 - c. The proposed wage rate bears a reasonable relationship to the wage rates on the wage decision; and
 - d. The workers that will be employed in the requested work classification (if known), or the workers' representatives (if any), agree with the proposed wage rate.

Compliance Principles

There are several compliance principles, definitions and interpretations that affect every Davis-Bacon – covered project. Adhering to these principles will promote effective LCA contract administration and enforcement.

Responsibilities of employers. All employers (contractors, subcontractors and any lower-tier subcontractors) 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.

Responsibilities 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.

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.

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. All laborers and mechanics may be paid no less than the applicable prevailing wage rate for the type of work they perform.

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.

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.

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.

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).

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.

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.

1. **Registration.** The apprentice or trainee shall be individually registered in a bona fide program certified by the BAT or a SAC.
2. **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.

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3. **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.
4. **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.

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.

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.

Fringe benefits. Fringe benefits may include:

1. Sick, vacation or holiday pay; costs to defray expenses of apprenticeship or similar programs; medical or hospital care; supplemental unemployment benefits; life insurance; pensions on retirement or death; compensation for injuries or illness resulting from occupational activity; other bona fide fringe benefits; or insurance to provide any of these.
2. 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.
3. 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.

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

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“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.

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.

CWHSSA overtime. Contract Work Hour and Safety Standards Act (CWHSSA) overtime requirements are applicable to prime contracts valued at \$100,000 or more, including any subcontracts subordinate to the prime. CWHSSA requirements apply only to laborers, mechanics, watchmen and guards employed on the site of work.

1. Overtime hours are defined as all hours worked at the site of work in excess of 40 hours in any workweek.
2. CWHSSA requires the payment of time and one-half the basic rate of pay for all hours worked in excess of 40 hours in a week.

3. Amounts paid to fulfill the fringe benefit portion of the prevailing wages listed in the wage determination – both contributions to bona fide benefit plans and cash payments made to meet wage determination fringe benefits requirements – are excluded in computing overtime obligations under CWHSSA.
4. CWHSSA requires the payment of overtime premium pay only if the laborer or mechanic works in excess of 40 hours in a work week on the CWHSSA-covered contract(s). Overtime hours worked, which are not subject to CWHSSA, may be subject to Fair Labor Standards Act overtime pay.
5. CWHSSA overtime violations are subject to liquidated damages calculated at the rate of \$10 per day, per violation.

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:

1. 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.

2. His or her correct work classification(s);
3. Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits;
4. Daily and weekly number of hours worked, including any overtime hours;
5. Gross earnings, deductions made, and actual net wages paid;
6. Evidence pertaining to any fringe benefit programs; and

7. 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.

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.

1. 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
2. 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.

Willful Violations/Falsification Indicators

“Spot-checks” of certified payroll reports (CPRs) and related documents are conducted 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, page 45.

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.

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.

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

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employees to cash the paychecks and then requires the employees to kick-back a portion of the check proceeds to the employer in cash.

Davis-Bacon Wage Restitution

When underpayments of wages have occurred, the employer must pay wage restitution due to the affected workers. Wage restitution must be made promptly and in the full amounts due, less permissible and authorized deductions.

If a violation of labor standards requirements results in an underpayment of wages to employees, the LCA should notify the prime contractor to either make wage restitution, or direct its subcontractor to do so. Where restitution amounts are in excess of \$10 per worker, the employer must attest to wage restitution paid on a correction certified payroll.

Computing wage 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.

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, and their 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.

Review of correction CPRs. The LCA must compute the amounts of restitution due and compare his/her computations to the correction CPR to ensure that full restitution was made. The employer must be notified of any discrepancies, and

required to make additional payments, if needed, evidenced on a correction CPR, within 30 days.

Withholding from payments due the contractor. If wage violations are not corrected within 30 days after notification to the prime contractor, the LCA may cause withholding from payments due to the contractor in the amount needed to ensure the full payment of restitution and, if applicable, liquidated damages computed for CWHSSA overtime violations. Only the amounts necessary to meet the potential back wage and CWHSSA liquidated damages liabilities should be withheld.

Unfound/unpaid workers. The gross amount of wages due to any employee who is entitled to wage restitution and is not paid for any reason must be placed in a labor standards escrow account as a condition for final closing/close-out.

The LCA holds the funds on behalf of the underpaid worker(s) and attempts to locate and pay the amounts due to them. After reasonable efforts to locate the workers are exhausted, the LCA must turn over the gross amount due to any unfound workers to HUD. Contact the HUD Labor Relations Specialist for your area if you encounter this situation.

Acronyms/Symbols/Websites

Acronyms/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
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
FHA	Federal Housing Administration
FLSA	Fair Labor Standards Act
FOH	Field Operations Handbook (DOL)

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FOIA	Freedom of Information Act
HAP	Housing Assistance Payments Contract
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, tribal or) Local Contracting Agency(ies)
LDP	Limited Denial of Participation
LRS	Labor Relations Specialist(s)
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

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PA	Portal to Portal Act
PHA	Public Housing Agency
PIH	Public and Indian Housing
PRAC	Project Rental Assistance Agreement
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
TDHE	Tribally-Designated Housing Entity
TDW(s)	Tribally-determined Wage Rates
USHA	U.S. Housing Act of 1937
§	Section
¶	Paragraph

Websites

HUD Office of Labor Relations	www.hud.gov/offices/olr
HUD Regulations	www.access.gpo.gov/nara/cfr/cfr-table-search.html
HUDClips (Forms and Publications)	www.hud.gov/offices/adm/hudclips/index.cfm
DOL Davis-Bacon and Related Acts Homepage	www.dol.gov/whd/contracts/dbra.htm
DOL Regulations	www.dol.gov/dol/allcfr/Title_29/toc.htm

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Davis-Bacon Wage Decisions	www.wdol.gov
DOL Forms	www.dol.gov/whd/programs/dbra/forms.htm
GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs (Debarred List)	http://epls.arnet.gov

U.S. Department of Housing and Urban Development
Office of Departmental Operations and Coordination
Washington, DC 20410

Email: www.hud.gov/offices/olr

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