
Chapter 9 DEPOSITS AND ESCROW ACCOUNTS

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

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

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

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

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

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

Section I – HUD Deposit Accounts

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

contractor/employer produces evidence of such payments to workers (certified correction payroll reports), amounts equal to the payments are released back to the depositor. If the contractor cannot locate certain employees (unfound workers), HUD continues to hold an amount sufficient to pay the wage restitution due to the unfound workers and continues attempts to locate such workers for a period of three years after the date the deposit was established. At this point, the contractor/employer *must* be required to provide the last known mailing address and full Social Security Number for each unfound worker. After this three year period, HUD is not obligated to continue the search for unfound workers and any funds remaining in the deposit account are retained by HUD.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. **Final closing.** If a deposit is required as a condition for final closing, a receipt from the financial institution that completed the required deposit must be provided before the closing is concluded. OLR shall not lift a final closing condition without such documentation.

B. **Verification in LR2000.** Deposits must be verified in LR2000, via CFO data report import, prior to any disbursement from a deposit account.

C. **Aged deposits.** For "aged" deposit accounts; i.e, deposits created prior to FY 2005, HQLR may permit alternate verification methods. Alternate methods may include copies of wire transfers; checks; prior disbursements, etc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section II – LCA Escrow Accounts for Labor Standards Purposes

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

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

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

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

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

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

- B. Escrow purpose 2:** To proceed *without awaiting an administrative determination of the wages which may be due and unpaid* for work performed in the construction of the project on account of employers named on a schedule attached to the escrow agreement.
1. In these cases, the underpaid workers and the amounts of wage restitution due have not yet been determined. For example, a compliance review by the LCA, HUD or DOL may be ongoing, or restitution calculations may not be complete. To determine the amount required for the escrow, the LCA will estimate as closely as possible the full amount of wages, including any fringe benefits, which may be due and the amount of liquidated damages that may be computed for any CWHSSA overtime violations. HUD or DOL will supply the estimate where it is conducting the review. The escrow schedule indicates which employer or employers are involved and the amount estimated due relative to each.
 2. **Disposition:** When the amounts of wages (and any liquidated damages) have been finally determined by the LCA (or HUD or DOL, as appropriate), the LCA shall continue to hold funds sufficient to pay the total amounts determined due. Any excess funds that are not otherwise required to ensure proper payment for other employers may be released to the prime contractor provided that the funds are not required to ensure payment of other CWHSSA liquidated damages or wage restitution.
 - a. **Conversion to purpose “1”:** If the contractor/employer agrees with the determination of wages due, the escrow converts to a Purpose 1 (above). The contractor pays the effected workers in accordance with the schedule of wages due and submits certified correction payroll reports as evidence of such payments. Amounts are released to the prime contractor as evidence of payments to workers is produced. It is always preferable for the *employer* to make the restitution payments directly to the employees. However, if the employer is unable to do so, the LCA may make disbursements from the account directly to the underpaid workers (in accordance with the schedule). Restitution for unfound workers is retained as described above with the 3-year period beginning on the date that agreement on the determination of wages due is reached.
 - (1) **Note:** For cases involving DOL investigations, DOL will generally secure a release from the contractor and

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

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

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

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

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

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

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

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

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

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

Related Appendices

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