

PART 2 – Program Specific Guidance

In addition to the guidance provided in Part 1 regarding Registration and Reporting as required by Section 1512 and 1609 of the Recovery Act, OHHLHC is providing additional program information related to the ARRA grant program. The following program topics are included in this part of the guidance:

- Grant Agreement – Amendments
- Quarterly Progress Reporting System and Other Reports
- Waiver Requests
- Davis-Bacon Act
- Signage for Projects and Activities

A. Grant Agreement – Amendments

The OHHLHC will review your grant agreement to identify areas where amendments may be necessary as a result of OMB Recovery Act Guidance M-09-21 issued on June 22, 2009 (after your grant agreement was executed). OHHLHC will also review OMB Recovery Act Guidance M-09-15 issued on April 3, 2009 (issued around the time that your grant was executed). After the review is completed, OHHLHC will advise you of what amendments may be necessary.

B. Quarterly Progress Reporting System (QPRS) and Other Reporting Requirements

The reporting required by Sections 1512 and 1609 of the Recovery Act **does not** replace the existing reporting requirements of the Office of Healthy Homes and Lead Hazard Control as identified in your grant agreement. Therefore, the Quarterly Progress Reporting System (QPRS), financial status reports, the Section 3 Report, or other required reports are to be completed according to the established timelines.

C. Waiver Requests

The Recovery Act provides the Secretary with the authority to grant waivers: Specifically:

“The Secretary, in administering appropriated funds under the Recovery Act may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary of the use of these funds (except for requirements related to fair housing, labor standards, and the environment) upon a finding that such a waiver is necessary to expedite or facilitate the use of such funds.”

1. ARRA Lead Hazard Control and Lead Hazard Reduction grantees may request a waiver to eliminate certain income and occupancy requirements under Section 1011. Grantees must provide adequate justification in making the waiver request. The waiver, if granted, will:
 - a. Eliminate the requirement in Section 1011(a)(1) to have at least 50 percent of the rental units be rented by families or made available to families with incomes at or below 50 percent of the area median income, if it demonstrates that this waiver will streamline its enrollment procedures and reduce its overall timeframe to complete lead hazard control in housing units;



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b. Reduce the occupancy requirement in Section 1011(a)(2) that, after lead hazard control work, 90 percent of the units assisted with grants under this section be occupied by a child under the age of six years or be units where a child under the age of six years spends a significant amount of time visiting, to 60% for vacant owner-occupied housing, if it demonstrates that this waiver will, in the target area of the grant, facilitate implementation of the Neighborhood Stabilization Program and/or encourage leveraging of funds for implementing the Lead Safe Housing Rule (24 CFR 35, subparts B – R) in other programs that control lead hazards in foreclosed and otherwise vacant housing.

Written requests for either or both waivers must be made by the authorized organizational representative of the ARRA grantee and are to be sent to:

Ms. Michelle M. Miller
Director, Programs Division
Office of Healthy Homes and Lead Hazard Control
451 Seventh Street, SW Room 8236
Washington, DC 20410-3000

The request must include the name of the grantee as shown in the grant award document, the grant number, and a summary and documentary support for the factual and programmatic basis for the request.

Eligible ARRA grantees that wish to request both waivers for a specific grant must include both requests in a single letter. Jurisdictions with more than one eligible grant that wish to request waiver(s) for more than one grant must do so in a separate letter for each such grant. The OHHLHC will respond to requests within 20 days of receipt.

2. OHHLHC is aware of the additional administrative burden on grantees in implementing Recovery Act reporting and other requirements for their program and has requested waiver authority for ARRA lead hazard control grantees of the 10% statutory cap (under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X; Pub. L. 102-550)) on administrative costs. If the waiver is granted, the administrative cost limit may be raised to 15%. OHHLHC will keep ARRA lead hazard control grantees informed of the status of the waiver request. The administrative cost for ARRA healthy homes grants is not limited by statute, but by the applicable Notice of Funding Availability, so the OHHLHC will be issuing its own waiver determination for these grants.

D. Davis-Bacon Act

Section 1606 of the American Recovery and Reinvestment Act of 2009 (ARRA) requires OHHLHC grantees to comply with the prevailing wages established under the Davis-Bacon Act (40 USC 31) for the area in which your grant is focused. Your grant’s “Terms and Conditions” stipulate this added requirement (HUD 1044). The Davis-Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia *construction contracts*, or federally-assisted contracts in excess of \$2,000, to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.



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Office of Healthy Homes and Lead Hazard Control (OHHLHC) grantees have historically not been covered by the DBRA. Because the ARRA requires lead hazard control grantees to comply with Davis-Bacon, this guidance will assist your grant program in complying with these requirements. OHHLHC understands that compliance with Davis-Bacon may result in increased per-unit costs and other unforeseen administrative costs, and, therefore, will affect your budgets. In this case, once you have determined the impact of Davis-Bacon compliance upon your program, you are advised to contact your Healthy Homes Field Representative (HHR) and Government Technical Representative (GTR) to establish new program benchmarks and budget.

It is important to note that OHHLHC grantees must still comply with requirements stipulated under the FY2008 NOFA, such as the requirement that a minimum percentage of funds must be used on direct lead hazard control activities, in accordance with the NOFA, and no more than 10% may be used on administrative costs. Your HHR and GTR will work with you to revise your work plan and associated budget to ensure that you have a viable program. For recipients of Healthy Homes Demonstration and Healthy Homes Technical Studies grants, the requirement to comply with the DBRA will depend upon the nature of work being conducted. Typically, since the DBRA applies to construction laborers and mechanics, whether a specific activity is covered under DBRA will vary. OHHLHC advises you to consult with your local labor relations specialist to discuss the extent and nature of your project. Some, or all, of your grant's activities may be exempt from DBRA. Labor Relations staff can assist you in making that determination; do not assume your grant is exempt. Contact information for HUD's Labor Relations staff in your area is provided at www.hud.gov/offices/olr/laborrelstf.cfm.

Taking the First Step

The first step to take in complying with Davis-Bacon is to become familiar with resources available. OHHLHC has a Davis-Bacon Resource page (www.hud.gov/offices/lead/recovery/davis-bacon.cfm) for ARRA grantees, where documents, required forms, and links to helpful websites are provided.

There are also other resources available in your local government and community that will be able to assist you. Your local Community Block Grant (CDBG) Administrator and HUD Labor Relations Specialists in each region are available to help you gain familiarity with Davis-Bacon's requirements and assist you in meeting Davis-Bacon requirements. HUD Labor Relations Specialists in each region can be located at www.hud.gov/offices/olr/laborrelstf.cfm.

The Davis-Bacon Wage Determination Process

ARRA grantees must determine prevailing wages to be paid for lead hazard control work *prior to* bidding that work. The following is an overview of the process that is to be followed to determine the prevailing wages in the community where work will be conducted.

Because Davis-Bacon is concerned with establishing the minimum prevailing wages for your community, you will want to know what those wages are for lead hazard control projects. Some communities already have wage determinations for "lead abatement workers" or some other labor category specifically applicable to lead paint remediation activities. However, many communities do not have these categories established. The first thing to do is visit the Department of Labor's (DOL) "Wage Determination" website for Davis-Bacon.

The Wage Determination Online website is located at www.wdol.gov. On the main page, select “Selecting DBA WDs” from the center column “Davis-Bacon Act”. The URL for this page is www.wdol.gov/dba.aspx.

Follow the steps below:

1. Select your state.
2. Select your county (if working in more than one county, you may either identify a state-wide wage rate or use wage rates for each county in which you will be working).
3. Under the “Construction Type” pull-down, select either “Residential” or “Building.”
 - a. If you are working in a building with FOUR OR LESS floors, select “**Residential.**”
 - b. If you are working in a building with FIVE OR MORE floors, select “**Building.**”
 - c. This selection is not based on the particular floor the work occurs on, but the size of the structure.
4. Now select “**Search.**” You will be shown all the wage determinations for established labor categories.
5. Scroll through this list and locate the applicable lead hazard control wage category for your work location, if one exists.
 - a. For example, in Orange County, NY, the wage category for “Lead Abatement Worker” is already established. You will follow the wage and fringe determinations when bidding your lead project. When your community has an established wage category for lead painter/laborer or lead abatement worker, or some other applicable labor category, you will be able to process with bidding out your projects.
 - b. If your locale does NOT have an existing labor category for “lead paint” worker, or other applicable labor category, you will select either “painter”, “carpenter” or “laborer” as the labor category. Use whatever makes most sense based on the type of work being done in the unit.

Activities Subject to Davis-Bacon

Only actual construction activities fall under the Davis-Bacon prevailing wage requirements, such as those commonly associated with lead-based paint hazard control. Associated non-construction activities are not subject to DBRA. For example, risk assessments, lead inspections, staff used in the relocation of occupants, carpet cleaning, installation of smoke/carbon monoxide detectors and so forth, are exempt from Davis-Bacon prevailing wage compliance. A word of caution: since the applicability under DBRA is new for OHHLHC and grantees alike, you are advised to contact your local HUD Labor Relations Specialist in your region (contact information on the website) before making any assumptions.

Frequently Asked Questions: Davis-Bacon’s Impact on OHHLHC Programs

Reporting: Davis-Bacon will increase the amount of reporting your program must perform. Take this into consideration when discussing any work plan/budget revisions with OHHLHC staff. Specific details about reporting requirements are contained in “Making Davis-Bacon Work: A Practical Guide for States,



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Indian Tribes and Local Agencies” (on the Resource website), but your local HUD Labor Relations contact will be able to guide you through this, as well.

State Prevailing Wages: If your State has issued prevailing wage requirements for lead hazard control work, and those prevailing wages are higher than the Davis-Bacon prevailing wage, you must use the higher of the two wages. However, you must obtain a wage determination from the DOL website regardless, and not from your state’s labor department alone.

Exemptions and Unit Thresholds: Davis-Bacon requirements are applicable to ALL housing units for which OHHLHC ARRA funds in excess of \$2,000 will be spent. When OHHLHC funds are used in part or in whole with other program funds that are exempt from ARRA requirements for the DBRA (e.g., some CDBG and HOME funds), DBRA prevailing wages must be complied with for ALL funds used in the project. This requirement applies not only to the lead hazard control work, but also extends to the work being done using CDBG and/or HOME funds.

E. Signage Identifying Recovery Act Funded Projects and Materials

One of the critical goals in implementing Recovery Act-funded programs is transparency. In support of that goal, we encourage ARRA grant recipients to identify and HUD Recovery-funded projects or materials, to the extent possible and reasonable, with clear signage. Although this is not a requirement, we are recommending that you consider placing signage on ARRA. This is not a HUD requirement, however it is suggested.

In order to facilitate this request; we have provided, as an attachment to the electronic transmission of the guidance material to the OHHLHC ARRA grantees, the 2 PDF files to be used as resources in this process. OHHLHC is also including these files on the OHHLHC ARRA webpage.

- A sample signage graphic, in which you can add partner and project info and print to desired size using desired materials; and
- A sample decal graphic which can be printed and added to existing signage.

Please use past practice for labeling HUD-funded projects, as well as grant guidelines and your own judgment to inform your decision about where and how to post signs.

If you plan on placing the American Recovery and Reinvestment Act logo on publications and brochures you can download the logo (4 file formats) at: arts.endow.gov/manageaward/logos/ARRAlogo.html