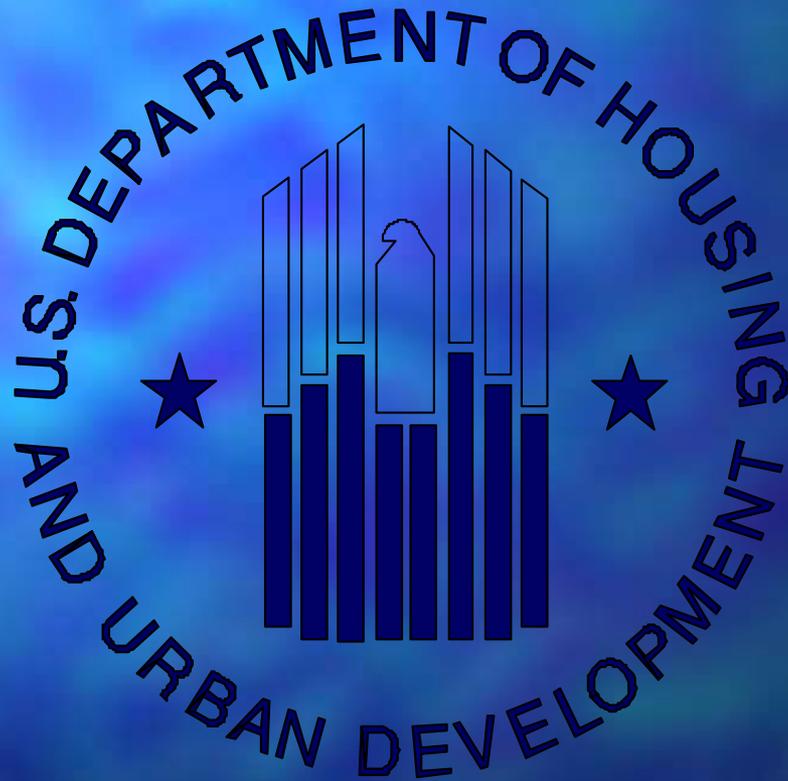


Disaster Recovery Compliance Davis-Bacon and CDBG



Topics we'll cover - 1

- Key objectives
- Agency responsibilities
- Introduction of statutes
- Bid specifications and contracts
- Davis-Bacon wage decisions

Topics we'll cover - 2

- Contractor responsibilities
- Certified payroll basics
- Compliance monitoring
- Recordkeeping and reporting
- Q & A

Labor Relations Contacts

- LA/NY/TX – Jade Banks, (202) 402-5475
- AL – Rhonda Lindquist, (678) 732-2585
- FL – Steve Bales, (678) 732-2039
- MS – Patrick Richards, (678) 732-2710

Resources

- HUD Office of Labor Relations Web Site
www.hud.gov/offices/olr
- DOL Wage Determinations Online
www.wdol.gov
- HUD Customer Service Center
(800) 767-7468



Most Wanted List...

Key Objectives

(Practical Guide, Page 2)

- Apply Davis-Bacon properly
- Support contractor compliance
- Monitor contractor performance
- Correct violations
- Pursue sanctions when warranted

State Responsibilities (1)

(HUD Handbook 1344.1, Chapter 10)

- Certify compliance with requirements
- Designate staff for labor standards responsibilities
- Maintain records demonstrating subrecipients are informed/provided technical assistance regarding labor standards
- Ensure no contracts are awarded to ineligible contractors

State Responsibilities (2)

(HUD Handbook 1344.1, Chapter 10)

- Receive/transmit labor standards enforcement reports to DOL (*or* through HUD)
- Refer to HUD potential criminal/complex investigations, debarment, CWHSSA liquidated damages
- Assure worker complaints are addressed promptly
- Monitor subrecipient performance



State Support to Subrecipients

- Determine Davis-Bacon applicability
- Ensure bid/contract specifications contain applicable wage decision and HUD-4010
- Verify contractor eligibility
- Provide technical assistance

State Oversight of Subrecipients

- Ensure subrecipients:
 - Conduct onsite interviews
 - Monitor contractor/subcontractor compliance
 - Address/require resolution of labor standards discrepancies
 - Maintain full documentation
 - Prepare/submit enforcement reports, as needed

Subrecipient Responsibilities

- Designate staff
- Ensure submission of certified payrolls
- Conduct onsite interviews with laborers and mechanics
- Spot-check payrolls/related records
- Ensure correction of underpayments
- Submit enforcement reports as needed
- Maintain full documentation
- Maintain records 3 years after completion

Introduction to Statutes

Federal Labor Standards

- Three key Federal statutes
 - Davis-Bacon (and Related Acts)
 - Contract Work Hours and Safety Standards Act
 - Copeland Act

HUD Davis-Bacon Related Acts

(Practical Guide, Page 14)

■ CDBG

Housing and Community
Development Act of 1974, as
amended (HCDA); Section 110

CDBG: Factors of Applicability

(Practical Guide, Page 17)

- *All laborers and mechanics employed by contractors or subcontractors...*
- *...on construction work financed...*
- *...in whole or in part...*
- *.....shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.*



CDBG: Factors of Applicability

(Practical Guide, Page 17)

- Force account workers are exempt
- Construction work financed; soft costs do not trigger DB
- Anticipates other funding sources; total >\$2,000
- Property ≠ building; total # of units in property
- Volunteers are exempt



Volunteers

(HCDA Section 110(b); HUD Regs 24 CFR Part 70)

- Performs services voluntarily
- Do not receive compensation
- May be paid expenses or nominal fee
- Not otherwise employed on the project

Bid/Contract Specifications

(Practical Guide, Page 5)

Bid/contract specifications (*including* RFPs) for each covered contract must contain:

- Applicable Davis-Bacon wage decision

- Federal labor standards clauses
 - HUD-4010, Federal Labor Standards Provisions

Davis-Bacon Wage Decisions

- List of construction work classifications and minimum wage rates
- Four defined categories of construction: residential, building, heavy, highway
- May be modified to stay current
- Available at www.wdol.gov

Federal Labor Standards Provisions (HUD-4010)

- Describes labor standards applicable
- Describes what employers must do
- Obligates contractors/subcontractors to comply
- Provides remedies for noncompliance



Wage Decision “Lock-In” Rules

(DOL Regulations 29 CFR §1.6(a)(3))

- Wage decision “locks-in” at contract award or start of construction, which ever occurs first, *except:*
 - Competitive bidding: Lock-in at bid opening *provided* contract is awarded within 90 days
 - Modifications published <10 days before bid opening may be disregarded if found there is not sufficient time to notify bidders and report is made to contract file
 - Must update wage decision if contract award is >90 days

If Federal *and* State Wage Rates Apply...

- Contract must contain both Federal and State wage decisions/contract standards
- Employers must pay higher of two rates
- Payrolls must carry Federal statement of compliance (reverse of payroll form WH-347)



Contractor Eligibility

(Practical Guide, Page 5)

- Verify prime contractor eligibility against GSA Debarred List
- Make record in contract file
- Online access at: <http://epls.arnet.gov>

Additional Classifications

(Practical Guide, Page 17)

- After contract award
- Three (3) criteria for approval:
 1. Work is not already on the wage determination
 2. Proposed classification is used by the industry in the project area
 3. Proposed wage rate & fringe benefits bear a reasonable relationship to the rates on the wage determination
- Most important question: What does the employer normally pay?



Job Site Postings

(Practical Guide, Page 6)

- Notice to All Employees (WH-1321)
- Davis-Bacon wage decision OR
Project Wage Rate Sheet
- Protected from elements
- Accessible to all laborers and mechanics



Project Wage Rate Sheet

(Practical Guide, Page 23)

- ✓ Easy for contractors and subs to know what rates they must pay
- ✓ Easy for laborers and mechanics to see whether they are paid properly
- ✓ Easy for the contract administrators reviewing payroll reports
- ✓ Should be prepared only after the wage decision has been “locked-in”

PROJECT WAGE RATE SHEET

Project Name: _____ **Wage Decision:** _____

Project Number: _____ **County:** _____

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Laborers – FB:</u>		
				<u>Group</u>	<u>BHR</u>	<u>Total</u>
Bricklayers	_____	_____	_____	_____	_____	_____
Carpenters	_____	_____	_____	_____	_____	_____
Cement Masons	_____	_____	_____	_____	_____	_____
Drywall Hangers	_____	_____	_____	_____	_____	_____
Electricians	_____	_____	_____	_____	_____	_____
Iron Workers	_____	_____	_____	_____	_____	_____
Painters	_____	_____	_____	_____	_____	_____
Plumbers	_____	_____	_____	_____	_____	_____
Roofers	_____	_____	_____	_____	_____	_____
Sheet Metal Workers	_____	_____	_____	_____	_____	_____
Soft Floor Layers	_____	_____	_____	_____	_____	_____
Tapers	_____	_____	_____	_____	_____	_____
Tile Setters	_____	_____	_____	_____	_____	_____
<u>OTHERS</u>				<u>Group</u>	<u>BHR</u>	<u>Total</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

Truck Drivers – FB:

<u>Group</u>	<u>BHR</u>	<u>Total</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Operators – FB:

<u>Group</u>	<u>BHR</u>	<u>Total</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ADDITIONAL CLASSIFICATIONS (HUD 4230-A)

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Date HUD Approved</u>	<u>Date DOL Confirmed</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Contractor Responsibilities



- Prime contractors
- Subcontractors
- All employers



Prime Contractor

(Contractor Guide, Page 1-4)

- Post wage decision and Notice to all Employees at job site
- Include labor provisions/wage decision in all subcontracts
- Liable for full compliance of all employers

Subcontractor

- Include labor provisions in all lower-tier subcontracts
- Subcontractors communicate through prime



All Employers (1)

- Classify/pay all employees in accordance with wage determination
- Review wage determination, request additional classifications/wage rates
- Pay not less often than once a week
- Pay 1½ times regular rate of pay for all hours worked > 40/week



All Employers (2)

- Submit certified payrolls for own employees
- Maintain full documentation for not less than 3 years following completion (prime: for all employers)
- Ensure access to employees onsite



Working Subcontractors

(HUD Labor Relations Letter 96-01*)

- All laborers and mechanics are covered regardless of any contractual relationship alleged to exist
- Must be paid weekly
- May not certify payment of own wages
 - Exception: Owners working with their crew

*Available at Labor Relations Web Site

Weekly Certified Payroll Reports





Certified Payroll Basics (1)

(Contractor Guide, Page 2-3)

- Optional form WH-347, Payroll
- Compliance statement (w/original signature of corporate official or designee)
- Payrolls required/week
- Identify first and final payroll



Certified Payroll Reports (2)

(Contractor Guide, Page 2-3)

- “No Work” payrolls optional
- Payrolls must be complete and legible
- Prime contractor reviews prior to submission
- Payroll retention = 3 years



Contractor Compliance Monitoring

- Ensure submission of certified payrolls
- Conduct onsite interviews (HUD-11)
- Spot-check payrolls/related records
- Ensure correction of underpayments



On-Site Interviews

(Practical Guide, Pages 6 and 10)

Use onsite interviews to:

- Validate/test payroll data
- Develop complaints
- Target interviews to substantiate suspected violations
 - HUD-11 form available at OLR Web site (LR Forms)



Spot-Check Payrolls

(Practical Guide, Pages 6 and 10)

- Review for major trades
- Compare HUD-11s
- Focus on falsification
- Communicate results
- Ensure corrections, as needed

Payroll Falsification Indicators (1)

(Practical Guide, Pages 7 and 22)

- Ratio of laborers to mechanics (>1:1)
- Too few or irregular hours
- Discrepancies in wage computations
 - Example:
 - Real $\$20/\text{hr} \times 40 \text{ hrs} = \800
 - CPR: $\$37.51/\text{hr} \times 21 \text{ hrs} = \787.51 *not* \$800

Payroll Falsification Indicators (2)

(Practical Guide, Pages 7 and 22)

- Extraordinary deductions

OR....

- Worker complaint



Wage Restitution

(Contractor's Guide, Page 2-13 & 2-14)



- Notify prime/employer
- Employer submits evidence of restitution paid on *certified* correction payroll report
- Unfound workers
- Submit report where restitution totals \geq \$1,000

Recordkeeping/Reporting

- Full documentation of all covered contracts/work performed
 - Bid documents/contracts
 - Wage decision/conformances
 - Verification of contractor eligibility
 - Bid opening/start of construction
 - Certified payrolls/related documents
 - Onsite interviews
 - Documentation of all enforcement actions
 - Correspondence
- Retain for 3 years from completion
- Maintain/dispose of records responsibly

Enforcement Reports (1)

(29 CFR 5.7)

Case By Case (§5.7(a))

- Employer underpays by \geq \$1,000
- Violations appear aggravated or willful
- Recommendations on debarment;
CWHSSA liquidated damages

Enforcement Reports (2)

(29 CFR 5.7/Practical Guide Pages 8, 24→27)

Semi-Annual (§5.7(b))

- Oct 1 → Mar 31 and Apr 1 → Sep 30
- Instructions and fillable form HUD-4710 available @ OLR Web site (LR Forms)

Q & A

Thank you!

HUD HQ Office of Labor Relations

For assistance, contact:

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