



U.S. Department of Housing and Urban Development

Davis–Bacon Basics

Key Labor Standards Objectives

- Apply Davis–bacon requirements **correctly**.
- Provide basic training and technical support to contractors.
- Monitor contractor performance.
- Investigate probable violations and complaints of underpayment.
- Pursue debarment and sanctions against repeat violators.

Department of Labor Statutory Provisions

- Davis–Bacon Act (DBA)
- Davis–Bacon Related Acts (DBRA)
- Copeland Act (Anti–Kickback Act)
- Contract Work Hour and Safety Standards Act
- See 29 CFR Parts 1,3,5,6,7

HUD Related Laws and Handbook

- Section 110 of Housing and Community Development Act of 1974, as amended (CDBG, Section 108 Loan Guarantee, EDI/BEDI, NSP)
- National Affordable Housing Act of 1990 (HOME)
- HUD Handbook 1344.1 Rev 2

Local Contracting Agency Responsibilities

- Designate Labor Standards Officer(LSO).
- Prepare and ensure all bid documents, contracts and subcontracts contain Federal Labor Standard provisions (HUD 4010) and the applicable Davis-Bacon wage determination.
- Verify contractor eligibility.
- Provide contractor training and technical assistance.

Local Contracting Agency Responsibilities (continued)

- Post the applicable wage determination & Notice to All Employees,
- Conduct on-site interviews,
- Review certified payrolls,
- Investigate probable violations & complaints,
- Recommend debarment against repeat violators, and
- Prepare and submit enforcement reports.

Recordkeeping

- Maintain related construction records including certified payrolls for 3 years.

LR-06-02, 11/15/06, Custody, security and disposal of Federal labor standards compliance documents and investigative records

COMMUNITY BLOCK GRANT PROGRAM (CDBG)

NEIGHBORHOOD STABILIZATION PROGRAM (NSP)

Applicability Factors

- Funding in whole or in part construction work with contract amount \$2,000 >
- Using CDBG fund for finances (interest payment, permanent financing)
- Threshold unit – 8 units or more

Soft Costs

Do not trigger Davis–Bacon requirements:

- Real Property Acquisition,
- Architectural & Engineering Fees,
- Other Services (legal, accounting, construction management),
- Other non–construction items (furniture, business licenses, and real estate taxes)

Demolition work

- Covered by Davis–Bacon requirements *if* it will be followed by Davis–Bacon — covered construction.
- *See Labor Relations Letter No. OLR–09–01.*

Force Account

- Direct Recipients – DB does not apply.
- Sub-recipients (for example, not-for-profit organizations) – DB applies.

HOME PROGRAM

APPLICABILITY FACTORS

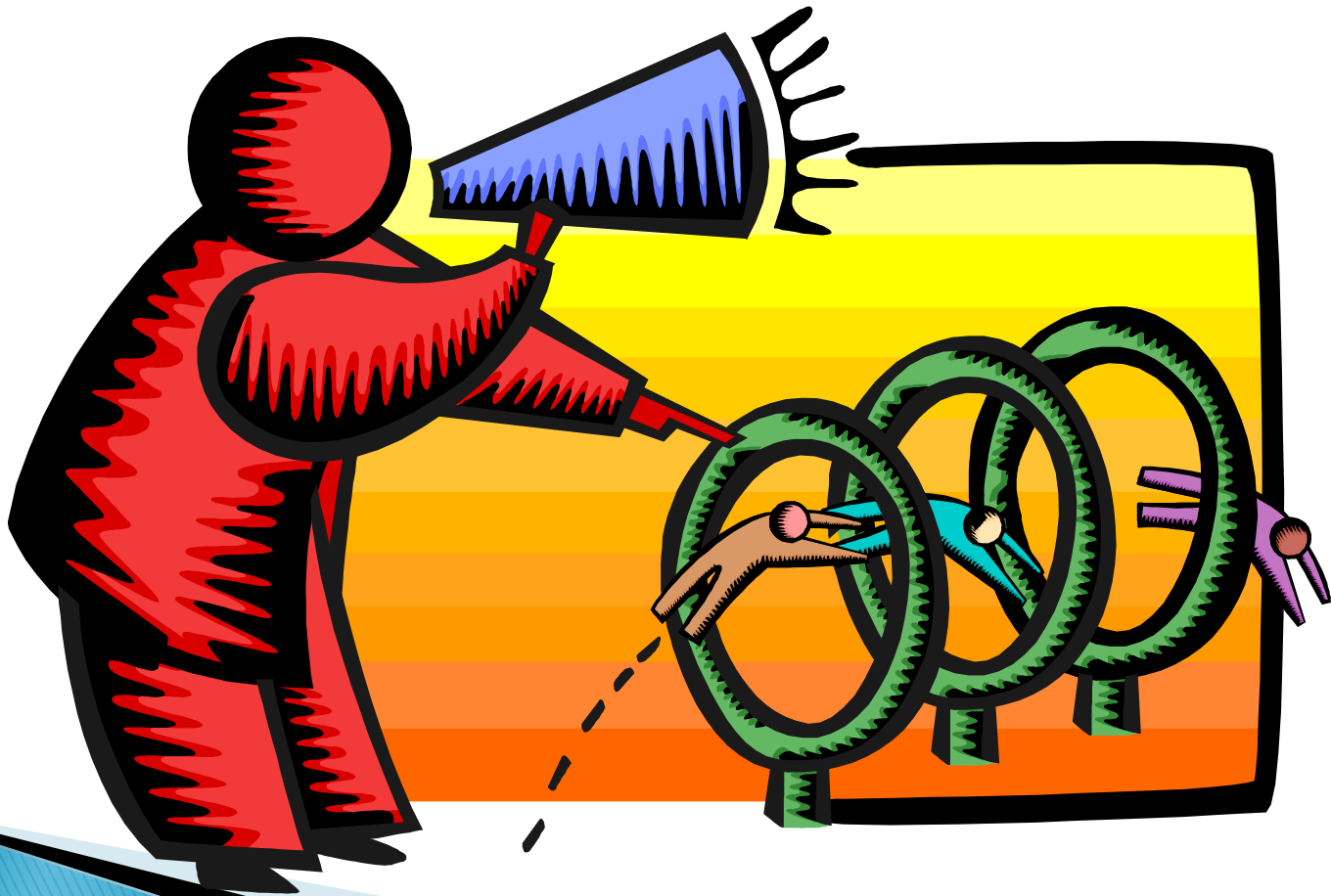
- The standard for coverage is “*assisted*” not *financed* . . .
- “Any *contract* for the construction of affordable housing with 12 or more units assisted with [HOME] funds . . .”

APPLICABILITY FACTORS

(continued)

- Once triggered, DB requirements apply to the entire project (*Refer to HUD Labor Standards Letter No. LR-96-02*)
- Sweat equity participation is exempt.

CONTRACT REQUIREMENTS



PROCUREMENT

- Inform Labor Standards Officer (LSO) in advance of advertisements, bid opening, contract awards, etc.
- Keep LSO “in the loop” re: construction progress, and requests for payment.
- Copy LSO on all key documents.
- Obtain LSO’s concurrence for final payment.

Labor Standards Documents Required for Construction Contracts

- Applicable (Locked-in) wage decision
- Federal labor standards provisions, HUD-4010

Incorporation of Labor Standards Documents

- Incorporation of hard copy
- Incorporation into other documents
- Incorporation by reference

Wage Decision

- Work Classification
- Basic Hourly Rate of Pay
- Fringe Benefits Hourly Rate

How to Locate General Wage Decision

<http://www.wdol.gov>

- By WHD Number
- By Selecting criteria
 - By State
 - By County
 - By Construction Type

Types of Wage Decision

- Residential
- Building
- Highway
- Heavy

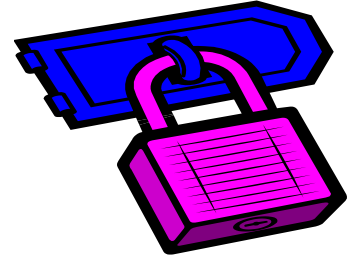
See Dept. of Labor All Agency Memorandum No. 130 and 131

What is Wage Decision Lock-In ?

- The wage rates in the wage decision are used for the entire period of construction from start to finish without changes.

What locks in the Wage Decision?

- Competitively bid contracts
 - Bid Opening Date if contract award is within 90 days.
 - If contract award is > 90 days – contract award date.
- No bid – contract award date.
- No bid or contract award – construction start date.



Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this

Request for Additional Classification, when do you need it?

When a classification is needed for the construction project but it is not listed in the applicable wage determination.

Request for Additional Classification

Submit a request in writing to DBLS. The request must include:

1. The Proposed classification.
2. The Proposed wage hourly rate and benefit hourly rate, if paid.
3. The scope of work.
4. Supporting documents, if available.

Additional Classification Rules

1. The proposed classification is used by construction contractors in the area of the project.
2. The work performed is not already performed by another classification on the wage decision.
3. The proposed wage rate “fits” with the other wage rates already on the wage decision.
4. The workers/employer agree with the proposed wage rate.

Contractor Clearance

- On-line verification

<https://www.sam.gov/portal/public/SAM/>

- Documentation of Verification

POSTER

- Davis–Bacon poster (WH–1321)

English:

<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

Spanish:

<http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>

ENFORCEMENT

Payroll Review, Employee Interviews, and Document Review



PAYROLL BASICS

- Optional WH347 form
- Compliance statement (certification)
- Weekly Submission
- First and Final payroll
- “No Work” payrolls
- Complete & legible

PAYROLL BASICS

Project & Contractor Information

- Contractor/sub-contractor name
- Business address
- Project name & number
- Week ending date
- Day & date for each day in the workweek
- Numbering payrolls (optional – but strongly recommended)

PAYROLL BASICS

Employee Information

- Employee name
- Identification number
- Employee work classification
- Rate of pay
- Straight/Overtime hours worked per day, per week

PAYROLL BASICS

Wages & Deductions

- Gross wages earned
- Deductions from wages
- Net pay
- Statement of compliance – one for each weekly payroll

Payment of Wages

- Basic wages and fringe benefits
- All cash wages

Example

A Davis–Bacon wage determination:

Basic hourly rate	\$20.00
Fringe benefit	<u>\$5.00</u>
Total prevailing rate	\$25.00

1. \$25.00 in cash wages;
2. \$20.00 plus \$5.00 in pension contributions or other “bona fide” fringe benefits; or
3. \$19.00 plus \$6.00 in pension contributions or any combination of “bona fide” fringe benefits.

Overtime

- Hours worked in excess of 40 during any workweek on the project site must be compensated at a rate not less than one and one half times the regular basic rate of pay.

FRINGE BENEFITS

- Does not include employer payments required by Federal, state or local law.
- Unfunded plans – i.e. Kaiser dental, 401 K plans, etc.
- Contractor must identify on certified payroll whether fringe benefits are, or are not paid.

DEDUCTIONS

- Those deemed permissible by 29 CFR Part 3.
- Contractor's Documentation.

Poster & Wage Decision



Record of Employee Interview

U.S. Department of Housing and Urban Development Office of Labor Relations

OMB Approval No. 2501-0009
(exp. 10/31/2010)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information.** The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential.**

1a. Project Name			2a. Employee Name			
1b. Project Number			2b. Employee Phone Number (including area code)			
1c. Contractor or Subcontractor (Employer)			2c. Employee Home Address & Zip Code			
			2d. Verification of identification? Yes <input type="checkbox"/> No <input type="checkbox"/>			
3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits?		4c. Pay stub?
				Vacation Yes <input type="checkbox"/> No <input type="checkbox"/>	Medical Yes <input type="checkbox"/> No <input type="checkbox"/>	Pension Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Your job classification(s) (list all) --- continue on a separate sheet if necessary						
6. Your duties						
7. Tools or equipment used						
8. Are you an apprentice or trainee? Y N 10. Are you paid at least time and ½ for all hours worked in excess of 40 in a week? Y N						
9. Are you paid for all hours worked? <input type="checkbox"/> <input type="checkbox"/> 11. Have you ever been threatened or coerced into giving up any part of your pay? <input type="checkbox"/> <input type="checkbox"/>						
12a. Employee Signature			12b. Date			
13. Duties observed by the Interviewer (Please be specific.)						
14. Remarks						
15a. Interviewer name (please print)			15b. Signature of Interviewer		15c. Date of interview	

Payroll Examination

16. Remarks

17a. Signature of Payroll Examiner	17b. Date
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Previous editions are obsolete

Form HUD-11 (08/2004)

Davis Bacon Definitions



Laborer or Mechanic?

- Laborer & Mechanic mean anyone who is performing construction work on the project.
- Foremen/Supervisors are covered if they spend 20% or more of their time performing manual work
- Every person who performs work is considered “employed” regardless of any contractual relationship

Site of Work

- Construction site *and* any other site where a significant portion of the building or work is constructed, provided that such site(s) is established specifically for the performance of the contract or project.

Exemption

Persons employed in a bona fide executive, administrative, or professional capacity as defined in Department of Labor Regulations 29 CFR 541.

Volunteers

- Services are offered freely and without pressure and coercion, direct or implied, from an employer
- An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers.

HUD – 24CFR Title I, Part 70—USE OF VOLUNTEERS ON PROJECTS SUBJECT TO DAVIS-BACON AND HUD-DETERMINED WAGE RATES

APPRENTICES and TRAINEES

- Only apprentices & trainees registered in an approved program may be paid less than the wage rate specified for their work classification
- “Approved program” means a program registered with the State Apprenticeship Agency or DOL

APPRENTICES and TRAINEES (Continued)

- Ratio requirements apply
- Pre-apprentices not registered in a program must be paid the full journeyman rate for the classification of work they perform

SPLIT CLASSIFICATIONS

- An employee performing work in more than one classification may be paid the wage rate specified for each classification **only if** accurate time records are kept. Otherwise, pay the employee the highest wage rate of the applicable classifications

ENFORCEMENT

Investigation conducted by;

- Department of Labor,
- Recipients, or
- HUD Office of Davis Bacon and Labor Standards (DBLS)

ENFORCEMENT

Use resources for investigations

- Send questionnaires
- Target employee interviews
- Develop complaints

ENFORCEMENT

Falsification Indicators

- Ratio of laborers to mechanics
- Too few or irregular hours
- Discrepancies in wage computations
- Extraordinary deductions

CORRECTING VIOLATIONS

- Notify prime contractor
- In writing, insert contractor's appeal rights
- Require appropriate documentation
- Withhold funds from the contractor, if necessary
- Document wage restitution of \geq \$10

ENFORCEMENT CORRECTING VIOLATIONS

- Wage restitution documentation
- Submit 5.7 report to OLS if \geq \$1,000 per contractor