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 conforming to 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 subcontractors and shall be kept on file for public inspection.

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.)

(e) 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 contract.
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.
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:

Spanish:
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             $5.00
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

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

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<th>16. Remarks</th>
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<tr>
<th>17a. Signature of Payroll Examiner</th>
<th>17b. Date</th>
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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.
• 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.
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
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.
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.
I, ________________________________ (Name of Signatory Party) ________________________________ (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by ________________________________ (Contractor or Subcontractor) on the ________________________________ (Building or Work) that during the payroll period commencing on the _____ day of ________________, ______, and ending the _____ day of ________________, ______, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said ________________________________ (Contractor or Subcontractor) weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 667; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(2) That any payroll otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

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<th>EXCEPTION (CRAFT)</th>
<th>EXPLANATION</th>
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REMARKS:

________________________________________________________________________
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NAME AND TITLE SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF THE 31 OF THE UNITED STATES CODE.
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 $10
ENFORCEMENT
CORRECTING VIOLATIONS

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