CH 8

CONSTRUCTION MANAGEMENT AND LABOR STANDARDS

Introduction

Construction management under CDBG requires that certain procedures be followed in order to comply fully with applicable Federal requirements. Federal labor standards are one component that requires recipients, contractors, and subcontractors, to meet and document compliance with certain rules associated with the employment of workers on construction projects. This chapter describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, which include labor standards, payroll requirements, pre-construction meetings, and inspection and approval procedures.

"Davis-Bacon And Labor Standards Contractor Guide Addendum" publication, a helpful resource guide, is available on cdbgSC.com or can be obtained from https://www.hudexchange.info/resource/6717/davis-bacon-and-labor-standards-agency-contractor-guide-and-contractor-addendum/.

Section 1 – Davis-Bacon Act Requirements

The Davis-Bacon Act is applicable to <u>all</u> contracts for construction, alteration and/or repairs, including painting or decorating, equipment installation and demolition (as applicable) in excess of $2,000 that involve CDBG funds (in whole or part), with the exception of rehabilitation of a residential structure or residential properties under one ownership that will contain less than eight units when completed. These provisions do not apply to construction work done by employees of the grantee (force account workers). Employees of utilities are exempt providing they are only extending service to the property.

The requirements of Davis-Bacon are:

- **Construction Contract Provisions:**
  - The construction contract must include labor standards clauses and a Davis Bacon Wage Decision. The clauses describe the responsibilities of the contractor and provide for enforcement of federal labor standards. These clauses are often referred to as the "HUD 4010" form and are incorporated in the CDBG Contract Special Conditions.

A Timeline of Davis - Bacon Requirements for CDBG Projects can be found at the end of this chapter.

- **Minimum Wages:** The minimum wage to be paid laborers and mechanics (including apprentices and trainees) must be based on the U.S. Department of

Labor's (DOL) determination of the prevailing wage rates for the locality, and may be no less than the federal minimum wage rate established by the Federal Labor Standards Administration (FLSA). The FLSA minimum wage rate is $7.25 per hour, effective July 2009. More information is available at: https://www.dol.gov/agencies/whd/minimum-wage

- **Wage Rate Decisions:** A wage decision is a schedule of construction work classifications and wage rates that must be paid to workers employed in those classifications. Wage decisions are established for defined geographic areas (county or group of counties) and by construction type. A wage decision includes the original decision and any subsequent modifying, superseding, or correcting provisions of the original decision.
  - Recipients must obtain wage rate decisions from DOL prior to bid advertisement, and these determinations must be included in bid documents and the construction contract.
  - Recipients with Internet access can obtain their own wage rate determinations directly from the Wage Determinations www.SAM.gov web site at https://sam.gov/content/wage-determinations.
  - Recipients must be sure to obtain the correct wage rate determination for each labor category based on project location, construction type, and date. When the correct wage rate determination is found, the recipient must print the document and include it in the bid specifications and contract.
  - It is critical that recipients obtain the appropriate type of wage decision, particularly if determinations are accessed online as discussed above. There are four types:
    - Building construction – Building construction is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies. It includes all construction of structures, and incidental items such as the installation of utilities, grading, and paving. The structures need not be habitable to be building construction.
    - Highway Construction – This category includes projects involving the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas and other similar projects not incidental to building or heavy construction.
    - Residential Construction – Residential construction projects are those involving the construction, alteration or repair of single-family homes or apartment buildings of no more than four stories in height. This includes all incidental items in the construction such as site work, parking areas, utilities, streets and sidewalks.

- Heavy Construction - Heavy construction projects are projects that are not properly classified in one of the other three categories. Because of this, projects within this classification may require the issuance of separate wage schedules. Examples of projects that may fall into this category include: bridges, drainage projects, flood control projects, sewers, water mains and supply lines, and storage tanks. Some counties may have a "Heavy" construction wage decision which includes sewer and water lines. Other counties may have a separate wage decision for "Heavy" and a separate wage decision for "Sewer and Water Line." Grantees may contact the State's Labor Specialist for assistance.

◆ **Multiple Wage Schedules** - Most CDBG assisted projects fit in a single construction category and multiple schedules are generally not allowed, except where the activities are substantial, separate and distinguishable construction elements and not incidental. Substantial is generally defined by DOL as more than 20% of total project cost.

- **Important Notes about Multiple Schedules:**
  - The project/contract specifications must clearly delineate the portions of the project subject to each wage decision issued.
  - All wage decisions must be posted at the job site with an explanation as to where each wage decision applies.
  - The prime contractor must agree to establish adequate controls to ensure that all laborers and mechanics are paid in accordance with the wage schedules.
  - Prime Contractors, subcontractors, and lower-tier subcontractors must agree to prepare, submit and maintain accurate employee time and payroll records to demonstrate compliance with all wage decisions applicable to the project.

- **Labor/Mechanic Classes:** If, after obtaining the wage decision, it is found that a class of laborer or mechanic not listed in the wage determination is to be employed on the project, the recipient must notify the State's Labor Specialist in writing so that an effort can be made to conform the laborer or mechanic to a classification already existing on the decision.

  Where surveying is performed in direct support of construction crews, such activity may be covered by DBRA. The status of

The State's Labor Specialist will review a Report of Additional Classification and Rate and the supporting documentation for completeness, then forward the report to DOL for final approval.

survey crew members as laborers and mechanics depends on the duties they perform. Survey crew members who normally spend more than 50 percent of their time performing primarily physical and/or manual duties while employed by a contractor or subcontractor in work performed immediately prior to or during actual construction on the site of the work will be considered a laborer or mechanic covered by Davis-Bacon requirements. The classification used for survey crew members may differ from area to area both in nomenclature (job titles) and in the content of duties performed by particular classifications.

- **Requesting Additional Classifications:** If a trade classification does not appear on the wage decision and the laborer or mechanic cannot be conformed to an existing classification on the wage decision, the grantee must complete and submit to the State a Report of Additional Classification and Rate (available in the attachments to this chapter.) This Report should identify the classification needed, recommend a wage rate, and include supporting documentation such as a copy of the Notice to Proceed issued to the contractor identifying the contract/project, a description of work to be performed for the classification and statements from both the contractor and the employee agreeing to the proposed wage rate and any bona-fide fringe benefits. See the Forms for this chapter for more information.

  In general, additional classifications and wage rates can be approved if:

  - The requested classification is used by construction industry in the area of the project. (The area is usually defined as the county where the project is located.) Classifications requested must identify the specific trade and should not involve generic titles such as operator, mechanic or installer.
  - The work to be performed by the requested classification is not performed by another classification already on the applicable wage decision. Conformance is not appropriate when the work of the proposed classification is already performed by a classification on the wage decision and employees must be paid at the wage rate for the appropriate work.
  - The proposed wage rate and any fringe benefits bear a reasonable relationship to the rates on the wage decision and not to a particular rate or the lowest rate. It is not permissible to automatically use the lowest rate in a work category (laborer, equipment operator, etc.) by default. In making the request, consider the entirety of the rates within the relevant category and consider where the proposed wage rate falls within those listed on the applicable wage determination.
  - The workers that will be employed in the added classification or the worker's representatives, if applicable, must agree with the proposed wage rate.

- **Period of Effectiveness:** A general wage decision is effective for 90 days and a project wage decision shall be effective for 180 days from the date of such decision.

A project wage decision relates only to construction work on the decision and is generally only issued if a general wage decision has not been published. If the contract is not awarded within the effective period, the wage decision is void. If it appears that a wage decision may expire prior to contract award, the recipient must request a new wage decision.

- **Modifications:** Ten days prior to bid opening, the recipient shall either check the SAM website again or contact the State to determine if any modifications to the wage rate decision have been issued. The recipient should maintain documentation that this was done.
  - A modification to a general or project wage decision published/received less than 10 days before bid opening may be disregarded if it is found that there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. A record of such finding must be made to the project file.
- **Retroactive:** If the recipient fails to include the wage decision, or for any reason the wrong wage decision is included in the contract, the applicable wage decision reflecting the proper rates must be incorporated into the contract and be retroactive to the beginning of the construction. The recipient can either terminate and re-solicit or incorporate the wage decision by change order.
- **Locked in Date/Contract Delays:** General wage decisions are locked in on the date bids are opened provided the contract is awarded within ninety (90) days after bid opening. If a wage decision has been issued, and if a contract has not been awarded within ninety (90) days of bid opening, or if construction has not begun within ninety (90) days of contract award, the recipient should check the Wage Decisions Online web site or contact the State to determine if the wage decision is still prevailing and if there have been any modifications issued. For negotiated contracts, the lock-in date is at contract award date.
- **Non-compliance:** Non-compliance with the labor standards contract provisions may result in withheld funds, sanctions, or contract termination.

Timeline of Davis Bacon Requirements for CDBG Projects

Timeframe	Action Required
45 days before bid advertising	If General Wage Determination is **not** available, submit Request for Wage Determination to the State

10 days before bid advertising	If General Wage Determination is available, submit Request for Wage Determination to the State or obtain from web site
10 days before bid opening	Determine if any modifications have been issued for the wage rate determination
90 days after bid opening	If no contract awarded, determine if any modifications have been issued for the wage rate determination
90 days after contract award	If construction has not begun, determine if any modifications have been issued for the wage rate determination

Section 2 - The Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act requires that payment to employees must be made at least once a week without subsequent deductions or rebate on any account except "permissible" payroll deductions. The recipient must obtain payrolls and a Statement of Compliance from contractors and subcontractors weekly. The recipient must check these payrolls for accuracy. Each employer and the recipient must maintain the basic records supporting the payrolls for three years after completion of the work.

See Section 7 of this chapter for more information on weekly payroll requirements.

Section 3 - Contract Work Hours and Safety Standards Act

Work Hours

The Contract Work Hours and Safety Standards Act (CWHSSA) requires that laborers and mechanics shall not work in excess of forty hours in any work week on the covered project unless they receive overtime compensation at a rate not less than one and one-half times the basic rate of pay for those overtime hours plus any fringe benefits. CWHSSA does not apply to prime contracts of $100,000 or less.

Safety Standards

Safety Standards and Accident Prevention provisions require contractors to:

- Comply with the safety standards provisions of applicable laws, building and construction codes, the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970, and the requirements of Title 29,

Section 1518.

- Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- Maintain at the construction office or other well-known place on the job site, all articles necessary for giving first aid to the injured, and make standing arrangements for the immediate removal to a hospital or to a doctor's care those persons (including employees), who may be injured on the jobsite. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or doctor's care.

Proper documentation of violations by the recipient is critical; an appeal by the contractor can be won if there is poor documentation by the recipient.

Penalties

Contractors in violation of the Contract Work Hours and Safety Standards Act may also be liable to the United States for liquidated damages, computed at $32.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.

Contractors and subcontractors must be advised in writing that, if they are aggrieved by the withholding of a sum of liquidated damages, they have the right to appeal within fifty days. A written appeal must state the reason for liquidated damages and should be addressed to the State.

Section 4 - The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) contains Federal minimum wage rates and overtime (O/T) requirements. The requirements generally apply to any labor performed and may be pre-empted by other Federal standards such as the Davis Bacon and Related Act prevailing wage requirements and Contract Work Hours and Safety Standards Act O/T provisions. Only the DOL has the authority to administer and enforce FLSA. HUD will refer any possible FLSA violations that are found on HUD projects to DOL.

Section 5 - General Labor Requirements

DOL guidelines include additional requirements as listed below. Recipients should note that they are responsible for insuring compliance by contractors and subcontractors. Inclusion of appropriate clauses in contracts, as well as monitoring by the recipient, is therefore very important.

- Compliance Responsibility: The prime contractor is responsible for compliance by

any subcontractor or lower tier subcontractor with all labor provisions and other Federal or State requirements. Subcontractors communicate through the prime contractor. The Grantee will consider the Contractor to be the sole point of contact with regard to contractual matters.

- Records Availability: The contractor must make pertinent records available for review and permit on-the-job interviews of employees.
- Monitoring: The recipient must monitor the construction and conduct on- the-job interviews with a representative number of workers on the job site, and from a representative sample of trades. The results should be compared to the applicable payrolls for the date the interview was conducted to determine if there are any discrepancies. Depending on the length of the contract period, whether subcontractors are used, or whether different workers are utilized over the life of the contract, it may be appropriate to conduct interviews on multiple occasions to ensure the samples are representative. A suggested Record of Employee Interview form (HUD-11) is included in the Forms for this chapter. The recipient may use this form or a similar form to gather the required information. See the "Job Site Interviews" section of this chapter for more details regarding employee interviews.
- Non-compliance: Contractors and subcontractors may be terminated for non-compliance and will be liable for any excess cost involved in completing the work.
- Contractor Eligibility: Prior to awarding any prime contract, recipients must verify the eligibility of the prime contractor, document in the file and provide the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions". In addition, all subcontractors must be eligible to receive federal funding. Subcontractor eligibility is the responsibility of the prime contractor and should be addressed at the pre-construction conference. If there is reason to believe that a subcontractor is ineligible, inquire further to learn the subcontractor's status, and notify the prime contractor immediately if an ineligible subcontractor must be terminated.

Any person or firm who has been declared ineligible because of previous instances of non-compliance may not participate in any contract involving CDBG funds.

  - While subcontractors are not required to be registered in SAM.gov, pursuant to 2 CFR 2424.300, the prime contractor is still responsible for determining whether they are entering into a covered transaction with an excluded or disqualified person/firm for subcontracts expected to equal or exceed $25,000. Methods to make the determination may include checking the Excluded Parties List System (EPLS) in SAM.gov or collecting a certification from the participant/firm that neither it nor its principals are debarred, suspended,

proposed for debarment, declared ineligible, or voluntarily excluded from participation. Note that if you use EPLS to check the information and receive a "no records" response, this is not an acceptable debarment check per HUD and a certification will be required. All documentation must be maintained in the Grantee's files to substantiate a subcontractor is not excluded/debarred for review at project monitoring.

- Material Suppliers: The manufacture and delivery to the work site of supply items (i.e., sand, gravel, concrete) provided by a bona-fide material supplier operating facilities serving the public in general, are not subject to DBRA requirements.
- Supply and Installation: Installation work performed in conjunction with an equipment supply contract is subject to Davis-Bacon and Related Acts where it involves more than an incidental amount of the construction activity, which is generally defined by the US Department of Labor as 20 percent. Items to consider are whether installation involves structural modifications to buildings to accommodate the equipment or the extent of the cost of installation relative to the cost of the equipment or total project cost.
- Required Postings: The **wage decision** and any additional wage classifications obtained plus the Employee Rights poster (WH-1321) must be displayed in a prominent place on the job site that is easily accessible to the construction workers employed at the project and where the posters will not be destroyed by wind or rain, etc. Employee Rights posters (WH-1321) are available in English and Spanish online at HUDClips.gov. This and other posters may be downloaded from the US Department of Labor website and include:
  - "Federal Minimum Wage" (WHD-1088)
    https://www.dol.gov/agencies/whd/posters/flsa
  - Employee Rights Under the Davis-Bacon Act" (WH-1321)
    https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf
  - "Your Rights under the Family and Medical Leave Act of 1993" (WH-1420)
    https://www.dol.gov/agencies/whd/posters/fmla
  - "Notice Employee Polygraph Protection Act" (WH-1462)
    https://www.dol.gov/agencies/whd/posters/employee-polygraph- protection-act
- Definitions:
  - Wages: Refers to the basic hourly rate of pay plus any contributions to a bona-fide fringe benefit fund, plan or program.
  - Fringe Benefits: Fringe benefits typically include health insurance premiums,

retirement contributions, life insurance, vacation, holidays, sick leave, etc. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security, some disability insurance payments, or unemployment compensation.

Some wage decisions include fringe benefits which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate, the fringe benefit rate will need to be added to the basic hourly rate. Prevailing wage requirements may be met by any combination of cash wages and creditable bona fide fringe benefit plans or programs.

◊ The total hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) provided by the contractor is less than the fringe benefit rate on the wage decision, add the balance of the wage decision's fringe benefit rate to the basic rate paid to the employee.

◊ For example, if the wage decision requires $10/hour basic rate plus $5/hour fringe benefits, the contractor must pay no less than that total ($15/hour) in the basic rate or basic rate plus the fringe benefits provided. The obligation could be met in several ways: the employee could be paid the base wage and fringe benefits as stated in the wage decision, or $15 in base wages with no fringe benefits, or $12 basic wage plus $3 fringe benefits. Additionally, the base wage could be "off-set" by more fringe benefits such as paying $9 basic wage plus $6 fringe benefits, as long as the total amount complies with the Davis- Bacon Wage and Fringe Benefit rate. Please be aware that the amount of the base wage used to "off-set" fringe benefits is limited by certain IRS and FLSA requirements.

◊ The effective hourly rate must be reflected on the certified payroll. The rate may be no less than the rate plus fringe on the wage decision for the classification of work performed.

- If the contractor or subcontractor is claiming an hourly credit for contributions to or reasonably anticipated costs of bona fide fringe benefit plans, funds, or programs, box 5 on the Statement of Compliance must be checked. The contractor must then complete the subsection titled "Hourly Credit for Fringe Benefits."
- If the contractor or subcontractor is paying cash in lieu of fringe benefits, box 5 should still be checked; however, the "Hourly Credit for Fringe Benefits" subsection does not need to be completed. These

payments must be reported under column 6C (Cash Payment in Lieu of Fringe Benefits) on page 1.

◊ If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid or credited (for example, box 5 is not checked, column 6C on page 1 is not completed, or the "Hourly Credit for Fringe Benefits" section is incomplete), the contractor may be required to submit corrected payrolls and pay restitution for any underpayments identified. If the basic hourly rate for any employee is at least as much as the total wage rate on the wage decision (basic hourly rate plus the fringe benefit rate), no correction is necessary.

◊ The overtime rate is computed at one and one-half times the basic rate of pay plus any fringe benefits. For example, if the wage decision requires $10/hour basic plus $5/hour fringe benefits, the overtime rate would be: ($10 x 1½) = $20/hour. The premium pay (1/2 time pay) is not applied to fringe benefits.

◊ The Grantee should inform every contractor and subcontractor working on a CDBG-funded project that they must maintain a complete set of payrolls, including evidence of fringe benefit payments for at least three years after the project is completed. The prime contractor must keep a complete set of all payrolls for every contractor and subcontractor.

- Laborer or Mechanic - "Laborers" and "mechanics" mean anyone who is performing construction work on the project, including trade journeymen.
- Salaried Workers/Working foreman - A Foreman or supervisor that regularly spends more than 20 percent of their time performing construction work are covered "laborers and mechanics" for labor standards purposes, whether they are salaried or paid hourly.

  ◊ Exclusions – People whose duties are primarily administrative. Executive or clerical employees are not laborers or mechanics. Examples include superintendents, office staff, timekeepers, messengers, etc.

- Employees - Every person who performs the work of a laborer or mechanic is "employed" regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the applicable wage decision for the classification of work they perform. Owners of businesses working with their crew may certify to the payment of their own prevailing wages in conjunction with their employees. Owner-operators of power equipment (contracts for man and machine) sole-proprietors, self-employed mechanics and/or independent contractors

(contracts for piece work) may not submit their own payrolls certifying to their own wages BUT must be carried on the responsible contractor's certified payroll report.

- Split-classification - If you have employees that perform work in more than one classification, you can pay the wage rates specified for each classification only if you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the highest wage rate of all of the classifications of work performed.
- Apprentices - The contractor must furnish a certification from the DOL Bureau of Apprenticeship and Training or a Bureau of Apprenticeship and Training recognized state apprenticeship agency for each apprentice employed on the project. All apprentices and trainees must be identified in each payroll submission. The ratio of apprentices to journeymen must not exceed the approved ratio under their respective program and their wage rate must not be less than prescribed under those programs.
- Volunteers - Exceptions to the labor requirements are made for volunteer services on a case-by-case basis. Contact the State for approval.
- Helpers - Federal labor standards do not recognize the "Helper" classification. A contractor must re-classify any employee listed as a helper on weekly payrolls with a classification listed on the appropriate wage decision.
- Site of Work – The "site of work" is where the Davis-Bacon wage rates apply. Usually this means the boundaries of the project. "Site of work" can also include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

Section 6 - Pre-Construction Conference

Immediately following contract award, the engineer or architect will hold a pre-construction conference with the prime contractor and any subcontractors. However, the recipient must play an active role in ensuring that the contractor and subcontractors understand and comply with CDBG requirements. The purpose of the pre-construction conference is to apprise the contractor and subcontractors of labor standards, equal opportunity, Section 3 and other contract obligations and responsibilities. A pre-construction conference also serves as an opportunity for all parties to discuss how the project is expected to progress, the schedule for completion, who has review authority for contracts, and method and schedule of payments, change

An Outline for a Preconstruction Conference is available on the Forms section of the website.

orders, etc. It also allows an opportunity to obtain any outstanding contract documents and provide the contractor with posters for the construction site.

The recipient must keep an attendance roster and minutes of the pre-construction conference. The minutes must contain:

- Project name, location, and description, wage determination number,
- Contractor and known subcontractor's names,
- Contract amount
- Date, time, and place of conference,
- Conference attendees,
- A list of the specific CDBG requirements that were discussed, and
- Summary of other items covered.

Following execution of contract documents and completion of the pre- construction conference, the recipient should issue a "Notice to Proceed" to each prime contractor that establishes the contract execution date, construction start date and scheduled completion date. Provide the State with a copy of the Notice to Proceed, which is used to make a labor report to HUD, as required.

Section 7 – Weekly Payrolls

Payrolls must be submitted for each week of actual work. Each contractor, subcontractor and any lower tier subcontractor is required to complete and submit payrolls no later than seven work days following the completion of the workweek. Payrolls should be completed on the Payroll form (DOL Form WH-347) or an equivalent form (as long as it contains all the information on the WH-347), which must be submitted along with the Statement of Compliance. These forms, along with a Contractor Payroll Checklist, are included in the Forms for this chapter. A PDF Payroll form can found on-line at:

https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf

A web-based WH-347 form generator is also available at:
https://www.dol.gov/agencies/whd/forms/wh347-web

Please note, the online form generator does not allow modification of the workweek day order; it is automatically set from Sunday through Saturday. Additionally, entries cannot be saved, so all project and contractor information must be manually re-entered each time the form is completed.

Submission Requirements

Weekly payrolls should be numbered consecutively beginning with Number 1. The last

payroll must be marked "FINAL." A payroll must be submitted promptly following the close of each pay week in which work occurs until completed. If no work is performed during a given week, weekly payrolls need not be submitted provided that payrolls are being numbered sequentially or, if no work is to be performed on the project for a longer period of time, the contractor/subcontractor may submit a written notice of the no work period. A sample notice form is in the attachments to this chapter.

Contractors and subcontractors must include their Internal Revenue Service (IRS) Employee Identification Number (or last four digits of their Social Security Number if self-employed) on the first payroll in the upper right-hand corner of the front page.

- The payroll must be signed by a principal of the firm (owner or officer such as the president, treasurer or payroll administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent. Such a certification also designates the authorized individual to sign the payroll Statement of Compliance. Should the designee be changed, a new certification must accompany the next payroll.
- Payrolls shall not report employee's addresses or full Social Security Number (SSN). Instead, the first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last four digits of the employee's SSN. Afterward, the identifying number does not need to be reported, unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

  Employers must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for federal labor standards compliance monitoring. Prime contracts may require a subcontractor to provide this information for the prime contractor's records.
- The payroll should show only the regular and overtime hours worked on this project in Columns 4 and 5. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported in these columns. In these cases, the employer should list the employee's name, classification, hours worked on this project only, rate of pay, and gross earnings for this project in Column 7A, along with the total gross earnings for all work performed during the week in Column 7B. Deductions for all work are entered in Column 8, and the net pay for all work during the week is entered in Column 9.

Make sure payrolls are certified (contain an original signature), noting that an electronic signature is acceptable (i.e. via the internet). Please be careful to distinguish that electronic signature/submission does not mean pdf files of signed payrolls attached to

an email, or faxed copies of signed payrolls. These methods are comparable to photocopies and are not acceptable submissions. For monitoring purposes, the grant administrator should obtain hard copies of the original or electronically signed payrolls.

Review Process

Payrolls should be reviewed weekly by the recipient (initialed and dated) and compared with the wage decision issued for that project. Payrolls should reflect the workers on the job site for that week with the proper classification and pay rate. Payroll submissions must be complete and signed by the contractor or authorized representative and all deductions must be properly authorized. Prompt review will allow the recipient to initiate corrective action before a problem multiplies and while the workers are still available.

Also, make sure payroll deductions are adequately documented and permissible. Permissible deductions are identified on the Permissible Payroll Deductions form in the attachments to this chapter.

Deductions not included on the list of permissible deductions may be transacted only upon written authorization from the Secretary of Labor or his designee.

- Deductions that are required by law, such as FICA or income taxes, need no documentation.
- Adequate documentation for other permissible payroll deductions includes a copy of the written agreement between the employee and the employer for the payroll deduction, a copy of a court order, or a written statement from the employee authorizing the deductions. These types of documentation should also be in the employee's personnel file.

It is also necessary to check information on the HUD-11 form, Record of Employee Interview, against weekly payrolls. The payroll examiner must sign the HUD-11's as well as initial and date each payroll reviewed.

Violations

When any violation of labor standards requirements results in an underpayment of wages to employees, the recipient shall take necessary action to ensure restitution is made to each affected employee by the contractor. Contact the State's Labor Specialist for assistance when violations occur. Underpayment of wages to employees of $1,000 or more must be reported to the Department of Labor.

Section 8 – Job Site Visits and Employee Interviews

The recipient is required to conduct visits of the construction site to see if applicable DOL posters and the wage decision are posted.

Labor standards also require the recipient to conduct interviews with construction

employees using the Record of Employee Interview (HUD 11) form to determine compliance with the applicable wage decision and payrolls.

Job Site Interviews

The following standards and requirements apply to job site interviews:

- The person performing interviews must be knowledgeable of labor standards procedures.
  - Understand that labor standards enforcement is in the same category as other contract requirements.
  - Interviews are confidential and should not be conducted by employees of the prime contractor or subcontractor.
  - Failure of contractors to comply with labor standards requires corrective action and may result in the imposition of sanctions.
- Employee interviews shall be:
  - Sufficient in number to establish the degree of accuracy of records.
  - Representative of all classifications of employees on the project.

Recipients should attempt to interview a representative sample of all classifications of employees on the project, including a representative number of employees from a representative sample of trades as well as contractors or subcontractors. Interviews should be particularly targeted to projects, groups of employees or contractors where problems are suspected. Results of the interviews should be compared to the applicable payrolls for the date the interview was conducted to determine if there are any discrepancies. Depending on the length of the contract period, whether subcontractors are used, or whether different workers are utilized over the life of the contract, it may be appropriate to conduct interviews on multiple occasions to ensure the samples are representative.

- Place of Interview:
  - On job site if it can be conducted properly and privately (this is a one-on-one process).
  - In cases involving possible falsification of records or worker fear of reprisals or intimidation, it may be more advisable to conduct the interview in a neutral and secure setting, such as the worker's home, the agency's office, or another appropriate location.
  - If an in-person interview is not feasible, it may be conducted virtually or by telephone.

- Written interviews, conducted via mail or email, should generally be used only when in-person, telephone, or virtual interviews are not possible.

- The interviewer should see that the wage determination and other required posters are properly displayed.
- Workers should not be interviewed in the presence of the contractor or a representative of the contractor (e.g., a lawyer).
- The interviewer should observe the duties of workers before initiating interviews.
- To initiate the interview, the authorized person shall:
  - Properly identify himself/herself.
  - Clearly state purpose of interview.
  - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
- When conducting employee interviews, the interviewer should pay particular attention to:
  - Employee's full name.
  - Permanent mailing address.
  - The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
  - Hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
  - The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
  - If it appears the individual may be underpaid, the interviewer should closely question the worker:
    - ◊ Ask for any records.
    - ◊ Arrange to re-interview the employee.
  - Enter the worker's statement of his/her classification.
  - Observe duties and tools used:
    - ◊ The employee must be observed performing duties on the job as part of the interview process.
    - ◊ If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form (HUD-11).

- ◊ If there are discrepancies, detailed statements are necessary.
- Enter any comments necessary.
- Enter date interview took place.

- The payroll examiner must compare information on the HUD-11 form with the payroll submission:
  - If no discrepancies appear, "None" should be written in the ”Remarks” section of the HUD-11 form.
  - If discrepancies do appear, appropriate action should be initiated with the employer. Only the name of the employee interviewed, the date of the interview, and the interviewer’s observation may be released to the employer. Any statements of the employee cannot be disclosed without prior written consent.
  - When necessary action has been completed, the results must be noted on the interview form.

Section 9 - Restitution for Underpayment of Wages

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a certified payroll report.

Employers are not required to submit checks (certified or otherwise) to correct underpayments. Restitution payments are reported and certified by the employer on a correction payroll.

- Notification to the Prime Contractor: The contract administrator will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the recipient may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.
- Computing Wage Restitution: Wage restitution is the difference between the wage rate paid to each affected employee and the wage rate required on the wage

decision for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

- Calculating Interest for Wage Restitution: In accordance with 29 CFR 5.10, interest must be added to all back wages or fringe benefits owed, calculated from the date of the underpayment. Interest is computed using the rate for underpayment of taxes under 26 U.S.C. 6621 and is compounded daily. The applicable rate must be based on the rate(s) in effect during the period of underpayment. The employer must document the interest calculation, including the rate used, time period covered, and total interest owed, and include this amount with the restitution payment. The current federal short-term rate is published by the IRS and can be accessed on the IRS website.
- Correction Payrolls: The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6, or payrolls for a specified beginning date through a specified ending date). The correction payroll will list:
  - Each employee to whom restitution is due and their work classification,
  - The total number of work hours,
  - The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
  - The gross amount of restitution due,
  - Deductions, and
  - The net amount to be paid.
- A properly signed Statement of Compliance must be attached to the correction certified payroll.
- Generally, the contractor is not required to obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) in order to document the payment.
- Review of correction certified payroll: The administrator will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.
- Unfound workers: Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located.

After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid, providing their names, Social Security Numbers, last known addresses and the gross amount due. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The Program Administrator should continue to attempt to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound workers should be credited and/or forwarded by the Program Administrator to the State.

Section 10 – Section 3 Requirements

This section of the Housing and Urban Development Act of 1968, as amended in 1992, requires that, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, funding recipients direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons and to businesses that provide such opportunities. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

Thresholds and Applicability

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds for the following Section 3 covered projects: housing rehabilitation; housing construction; and other public construction. The requirements apply recipients or subrecipients of CDBG assistance for Section 3-covered project(s) for which the amount of the assistance exceeds $200,000. The Section 3 requirements apply to the entire project or activity that is funded with CDBG assistance (subject to the threshold requirements), regardless of whether the Section 3 activity is fully or partially CDBG funded.

Section 3 does not apply to contracts for the purchase of equipment or supplies and materials, unless the contract includes the installation of the materials.

Section 3 Workers and Business Concerns

Recipients, subrecipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities to Section 3 workers.

- A **Section 3 worker is:** Any worker who currently or when hired (within the past five years) is documented to fit at least one of the categories below.

- The worker's income for the previous or annualized calendar year is below the income limit established by HUD; or
- The worker is employed by a Section 3 business concern
- The worker is a YouthBuild participant

- A Targeted Section 3 Worker is:
  - A worker employed by a Section 3 business concern; or
  - A worker who currently fits or when hired (within the past 5 years) is documented to fit at least one of the following categories:
    - Living within the service area or the neighborhood of the project, meaning; or
    - A YouthBuild participant.

A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing evidence of eligibility. (See the Section 3 Resident Certification Form in the Attachments to this chapter.)

Contracting opportunities must also be given, where feasible, to:

- Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area in which the Section 3 covered project is located.
- Other Section 3 business concerns.

A Section 3 business concern is defined as:

- 51 percent or more owned and controlled by low- or very low-income persons; or
- Over 75 percent of the labor hours performed for the business over the prior 3-month period were performed by Section 3 workers; or
- At least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

A Section 3 covered contract is:

- A contract or subcontract awarded by a recipient or contractor for work arising in connection with Section 3 assistance. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, contracts that include labor, such as installation of materials, is covered.

The Section 3 covered service area is defined as:

- The area within a mile of the project, or if fewer than 5,000 people live within

one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

The attachments to this Chapter include an information sheet for businesses and contractors that should be included in the bid package, along with applicable Section 3 forms. The Contract Special Provisions will include Section 3 requirements and contractors are required to complete and submit the necessary Section 3 Worker forms. The Grantee must submit reports to the State regarding Section 3 compliance and document all efforts to meet these requirements.

Responsibility of the Recipient

Each recipient has the responsibility to comply with Section 3 in its own operations and ensure compliance in the operations of its contractors and subcontractors. This responsibility includes:

- Implementing procedures to notify Section 3 workers and businesses of employment or contracting opportunities.
- Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 business concerns.
- Notifying potential contractors for Section 3 covered projects of Section 3 requirements and incorporating the Section 3 clause in all construction solicitations and contracts. (See the CDBG Contract Special Provisions in the attachments to Chapter 7.)
- Including the Section 3 Information Sheet for Contractors/Businesses, Section 3 forms, and Section 3 clause (see attachments in Chapter 7) in all solicitations and contracts for a Section 3 covered project.
- Reviewing Section 3 requirements at the pre-construction conference.
- Submitting the Section 3 Labor Hours Tracking form to the state at project close-out.

Also, effective beginning in 2021, recipients and covered contractors must demonstrate compliance with the "greatest extent feasible" requirement of Section 3.

- To the greatest extent feasible, attempting to reach numerical goals and document actions taken to comply with the requirements of Section 3, including the results of actions taken and impediments, if any.

Recipients may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in this section for providing training employment, and contracting opportunities to Section 3 Residents and Section 3 Business Concerns.

- Numerical goals apply to contracts awarded in connection with all Section 3-covered projects and Section 3-covered activities.
- Each recipient and contractor and subcontractor may demonstrate compliance with the requirements by achieving the Section 3 safe harbor, which means certifying that they have implemented the following, required prioritization effort:
    - Ensuring at least 25 percent of all labor hours worked on a Section 3-covered project are worked by Section 3 Workers; and
    - Ensuring at least 5 percent of all labor hours worked on a Section 3-covered project are worked by Targeted Section 3 Workers.
- If a recipient, contractor and subcontractor do not achieve the Section 3 safe harbor benchmarks, reports must be submitted describing the qualitative nature of the Section 3 efforts. Qualitative efforts may include the following:
    - Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
    - Provided training or apprenticeship opportunities.
    - Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
    - Provided or connected Section 3 workers with assistance in seeking employment e residents to job placement services.
    - Held one or more job fairs.
    - Connected residents to job placement services.
    - Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
    - Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
    - Assisted Section 3 workers to obtain financial literacy training and/or coaching.
    - Engaged in outreach efforts to identify and secure bids from Section 3 business concerns. (See examples of efforts below.)
    - Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
    - Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
    - Provided bonding assistance, guaranties, or other efforts to support

viable bids from Section 3 business concerns.

- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

- In the absence of evidence to the contrary, a recipient that meets the minimum numerical goal will be considered to have complied with the Section 3 preference requirements. A recipient that has not met the numerical goal has the burden of demonstrating why it was not feasible. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, which were provided in its efforts to comply with Section 3.
- Examples of efforts to identify and use Section 3 business concerns include:
  - Incorporate Section 3 outreach and contracting in procurement procedures.
  - Identify eligible business concerns for CDBG-assisted contracts through: the Chamber of Commerce, business associations, local advertising media including newspapers; public signage; citizen advisory boards; and all other appropriate referral sources.
  - Maintain a list of eligible business concerns for utilization in CDBG-funded procurements and notify appropriate project area business concerns pending contractual opportunities, and to make available this list for procurement needs.
  - Carry out workshops to assist Section 3 business concerns in participating in contract opportunities.

Note that a Section 3 worker or business concern may file a complaint alleging non-compliance by the recipient or contractor with HUD CDBG Program Office or to the local HUD field office.

- Additional information on Section 3 requirements for CDBG recipients is included in the Attachments to this chapter and in Chapter 8: Procurement and Contracting.

CH8: CONSTRUCTION MANAGEMENT AND LABOR STANDARDS

Section 10 – Construction Management

Construction management or construction project management involves the overall planning, coordination, and control of a project from inception to completion aimed at ensuring CDBG requirements are met and that the project is carried out in accordance with the technical specifications of the contract.

The most common responsibilities of construction management fall into the following categories: Planning, Cost Management, Time Management, Quality Management, Contract Administration, Safety Management, and Project Team Coordination. Coordination includes organizing and implementing project controls, defining roles and responsibilities, developing communication protocols, and identifying elements of project design and construction which are not consistent with program requirements.

Construction management must be directed by the recipient but coordinated with the engineer or architect in conjunction with the grant/project administrator since the engineer or architect may not be familiar with CDBG requirements, approved activities, budgets, or grant periods. Responsibilities include:

- Supervision of construction work, inspections to determine compliance with technical specifications and approval of progress payments are the responsibility of a qualified individual such as the project engineer or architect.
- The recipient is responsible for compliance with CDBG requirements including equal opportunity, labor standards and Section 3.
- The recipient must also ensure that the contract is consistent with the approved CDBG activities and budget and that costs are eligible.

Contract administration involves communication, gathering information and monitoring:

- Project progress and reporting;
- Monitoring time of performance;
- Determining eligible costs;
- Monitoring total costs within budget;
- Monitoring compliance with CDBG requirements;
- Monitoring project scope and accomplishments;
- Obtaining approvals for any project changes.

The prime contractor is the main point of contact for all subcontractors. It is important for the prime to identify all subcontractors to be used in the project early. Subcontractors must be acceptable to the owner and not on the debarred list. They should be invited to attend the pre-construction conference so they will know what the CDBG requirements are, including Section 3. Subcontractors must be reported by the prime contractor and included on the Contract/Subcontract Activity Report.

The prime contractor is responsible for all labor compliance and getting correct payrolls from all subcontractors that worked on the project the preceding week. The prime is responsible for getting any necessary corrections on payrolls as well as wage restitution. It is very important that the grantee know the time of performance for all subcontractors so that payrolls can be collected, interviews of employees completed, and any necessary corrections made prior to the subcontractor completing his work and leaving the jobsite.

Progress Inspections

The architect/engineer must conduct periodic inspections of the contractor's work for compliance with specifications, drawings and conditions of the contract. These inspections must be documented in writing and kept in the CDBG project files.

Prior to approval of progress payments to contractors, recipients must make sure all work is completed as stated; that all payrolls have been submitted and are accurate and complete; wage violations are corrected and any restitution paid; and that all charges are allowable. Materials that are not installed are not a CDBG eligible expense.

Progress payments should be reviewed by the recipient and project grant administrator to ensure work completed is consistent with the approved application and environmental review by construction line item, quantities and location. The pay request should also be compared to the contract and substantial deviations in quantities may require an approved change order prior to payment. The review should also assess the time of performance remaining and whether it is consistent with the contract period.

A verification of the mathematical computations on the pay requests should be done and also a determination made of eligible and ineligible CDBG costs. Ineligible CDBG costs must be paid by the grantee or other source. To assist in verifying cost eligibility the project is required to be bid out and billed in separate divisions for CDBG ineligible costs.

Recipients should withhold at least 10 percent of each progress payment to the contractor as a retainage until the end of the project to ensure there are funds available to address any unanticipated issues (e.g., payroll issues, insufficient progress, etc.).

The Construction Contract Draw Request Review Checklist must be completed prior to submission of a Request for Payment to the State and should be kept on file for review at monitoring. This form is available in the Forms for this chapter.

Change Orders

Change orders should be kept to an absolute minimum. The recipient must obtain written approval from the State for all change orders, including no cost change orders, using the CDBG Change Order Transmittal (C-2) form (included in the Forms for Chapter 7 Procurement and Contracting), prior to execution and work being

completed.

Documentation submitted with every change order must include:

- Supporting justification which describes why the change is necessary,
- Itemized cost estimates,
- A cost and price analysis (usually conducted by an engineer) that determines the basis for costs being reasonable, and
- Any revised plans and specifications.
- Updated Section 102 Disclosure Form if the construction contract amount and any other pertinent information has changed. This form is available in the Forms for Chapter 7 (Procurement and Contracting).

If a change order will result in a significant change in the scope of the approved project as proposed in the CDBG application, a project amendment or budget revision may also be necessary. (See Chapter 12: Reporting, Amendments and Monitoring.)

The architect/engineer or project inspector usually prepares change orders; however, the recipient must approve and authorize change orders before they are given to the contractor and executed. The proposed change should also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel. The recipient should compare such change orders to the CDBG construction budget prior to approval.

Final Inspections

When construction work has been completed, the contractor must certify completion of work to the recipient and submit a final request for payment. Before work is accepted and final payment is made to the contractor, the recipient should verify that:

- All payrolls have been received and checked and any necessary restitution has been made (including final Section 3 reports).
- All other required Equal Opportunity and Labor Standards provisions have been satisfied.
- All contract submissions have been received.
- All claims and disputes involving the contractor have been resolved and a release of liens from the contractor and all subcontractors has been provided.
- Files are complete.
- As-built plans have been filed with the recipient, if applicable.

Chapter 8 - Construction Management & Labor Standards Forms

Construction Management

Outline of a Pre-construction Conference Construction
Contract Draw Request Review Checklist

Davis Bacon

Davis-Bacon And Labor Standards Contractor Guide Addendum – Federal Publication

Requesting Additional Classifications

Standard Form 1444 Request For Authorization of Additional Classification and Rate
Conformance Request Guide

Minimum Wage, Payroll and Checklists & Minimum Wage Posters, Notices, etc.

Authorization to Make Other Deductions
Authorization to Make Other Deductions Sample
Certificate Designating Employee to Supervise Payment
Permissible Payroll Deductions
WH-1321 Davis Bacon Poster
Labor Standards Checklist
No Work Performed Notice - Sample
Payroll Form WH-347 and Statement of Compliance
Payroll Checklist for Contractors
Permissible Payroll Deductions
Sample Correction Payroll

Employee Interviews

HUD-11 Record of Employee Interview
HUD-11 Record of Employee Interview– Spanish Version

Section 3

Section 3 Information Sheet
Section 3 Business Self-Certification Form
Section 3 Worker Self-Certification Form
Targeted Section 3 Worker Self-Certification Form
Section 3 Labor Hours Tracking Form

Section 3 Brochure for Workers and Businesses
Section 3 Job Aid for Contractors and Subcontractors

Forms and resources listed here can be downloaded from www.cdbgSC.com