

SECTION B: LABOR STANDARDS

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LABOR COMPLIANCE

INTRODUCTION

Construction projects funded with CDBG require that certain procedures be followed to fully comply with applicable federal and state regulations.

This section describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, including bid preparation, contract award, pre-construction meetings and compliance with prevailing wage requirements.

REGULATIONS/REQUIREMENTS

- **Davis-Bacon and Related Acts (40. U.S.C. 3141)** The Davis-Bacon Act (DBA), enacted by the United States Congress, covers contracts that are directly federally funded. After the DBA was enacted, Congress extended the reach of the Davis-Bacon Act provisions by passing Davis- Bacon Related Acts (DBRA), which cover contracts that are indirectly federally financed (or assisted) in whole or in part. The Louisiana Community Development Block Grant (LCDBG) program is funded through the U. S. Department of Housing and Urban Development (HUD). Thus, most of the LCDBG program’s construction contracts are indirectly federally funded and subject to DBRA. DBA and DBRA are basically the same in substance and purpose. This handbook will often use the following terms interchangeably: Davis-Bacon, Davis-Bacon requirements, prevailing wage requirements, DBA, and DBRA.

[Davis Bacon and Related Acts](#)

Davis-Bacon requires payment of locally prevailing wages to laborers and mechanics for on-site construction, alteration, or repair on federally financed projects having contracts in excess of \$2,000. Locally prevailing wages are determined by the U.S. Department of Labor (DOL) and made available to the public as “wage decisions.” A contractor(s) on an LCDBG project covered by Davis-Bacon must meet, at a minimum, the wage requirements set forth in the wage decision(s) applicable to the project.

- **Copeland "Anti-Kickback" Act (40 U.S.C. 3141)** The Copeland Act applies to contracts receiving federal financing (assistance) that are subject to Davis-Bacon requirements. The Copeland Act requires weekly payrolls, Statements of Compliance, and permission for pay deduction(s) not prescribed by law.

[Copeland Anti-Kickback Act](#)
- **Contract Work Hours and Safety Standards Act (40 U.S.C. 3141)** CWHSSA applies to federally financed (in whole or in part) contracts over \$100,000 and provides that workers be paid at least one and one-half times their basic hourly rate of pay for any time worked in excess of forty hours weekly.

[Contract Work Hours and Safety Standards Act](#)
- **Louisiana Law** Some issues are not addressed in federal law but will be applicable to LCDBG projects under state law. In cases where state law is more stringent than federal law, the state law would be applicable.
- **LCDBG Requirements** Numerous procedures and documentation requirements are established by the Office of Community Development, which is responsible for administering the federally funded LCDBG program.

RESPONSIBILITIES

LOCAL GOVERNMENT RESPONSIBILITIES

Each local government is responsible for ensuring compliance with Labor Standards as detailed in this section. The local government's designated Labor Compliance Officer (LCO), often an administrative consultant, is normally delegated the tasks associated with compliance with Labor Standards; however, the local government is ultimately responsible. The form used to designate the local government's Labor Compliance Officer is provided as [Exhibit B-1](#) and is for the local government's use only. Please do not send this form to the Office of Community Development-Local Government Assistance (OCD-LGA).

HUD has published two guides for local government grantees (also known as the local contracting agency or LCA) and contractors with detailed information on implementing Davis Bacon. These documents are "Davis Bacon and Labor Standards: Agency/Contractor Guide" and "HUD Handbook 1344.1" HUD also provides and an additional guidance document for contractors working on Davis Bacon projects called "Davis Bacon and Labor Standards: Contractor Guide Addendum".

[Davis Bacon and Labor Standards: Agency/Contractor Guide](#)
[HUD Handbook 1344.1](#)

[Davis Bacon and Labor Standards: Contractor Guide Addendum](#)

The local government must establish and maintain an adequate labor standards file(s) as specified in [Section A: Program Administration](#), Record Keeping and Reporting.

OFFICE OF COMMUNITY DEVELOPMENT RESPONSIBILITIES

The OCD-LGA will establish labor standards procedures, provide technical assistance regarding labor questions, conduct compliance reviews, and specify corrective actions.

WAGE DECISIONS

- **Definition of a Wage Decision** A wage decision is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics which DOL has determined to be prevailing in a given area for a particular type of construction. A Wage Decision Example is provided as [Exhibit B-2](#). The minimum pay requirements are referred to as "prevailing wages."
- **Source of Wage Decisions** The responsibility of determining prevailing wages is delegated to the United States Department of Labor (DOL). To meet this responsibility, DOL surveys contractors on construction projects to determine the prevailing wages for each locality. DOL then issues wage decisions for each locality. The terms "wage decision" and "wage determination" have the same meaning and are used interchangeably.
- **Wage Decision(s) as Part of the Construction Contract** Davis-Bacon requires that each prime contract over \$2,000 that is assisted by federal funds and is for construction, alteration, or repair of public buildings or public works, contain the applicable DOL wage decision(s). Most LCDBG projects are covered.

Subcontracts are also subject to Davis-Bacon by a required contractual agreement containing prevailing wage provisions between the prime contractor and subcontractor(s). If any portion of a contract is subject to Davis-Bacon requirements, then all work under that contract is, including the work of subcontractors.

TYPES OF WAGE DECISIONS

- **Building** The construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This type includes the construction of such structures, the installation of utilities, and the installation of equipment above and below the grade level, as well as incidental grading and paving. Structures need not be habitable to be considered as building construction.
- **Highway** The construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects that are not incidental to building or heavy construction.
- **Heavy** The construction on projects that cannot be classified as building, residential, or highway.
- **Residential** The construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes incidental items such as site work, parking areas, utilities, streets, and sidewalks. LCDBG block grants are not often awarded for the construction activities listed under “Residential” in the following table; therefore, housing projects funded by this office are rarely covered by Davis-Bacon.

The Four Decision Types Based on Nature of Construction

Building	Highway	Heavy	Residential
<ul style="list-style-type: none"> •Alteration of addition to buildings •Fire stations •Hotels and Motels •Power Plants •Prefabricated Buildings •Remodeling, repairing, and renovating buildings •Warehouses •Water/Sewer Treatment Plants (bldg only) 	<ul style="list-style-type: none"> •Curbs •Concrete Pavement including sidewalks •Parking Lots •Street Reconstruction •Roadbeds •Shoulders •Street Paving 	<ul style="list-style-type: none"> •Drainage Projects •Pumping Stations (prefabricated drop-in units) •Sewers (sanitary, storm, etc.) •Sewer Collection •Water Storage Tanks •Water/Sewer Treatment (other than buildings) •Water Mains •Water Wells 	<ul style="list-style-type: none"> •Apartment Buildings (4 stories or less) •Married Student Housing •Multi-family Housing •Townhouses or Row Houses •Single Family Houses (8 or more in a single contract)

OBTAINING A WAGE DECISION

- **Choosing and Downloading the Proper Wage Decision** Multiple factors must be considered to enable the proper choice of wage decision(s). Factors to consider when choosing a wage decision include:
 - decision type—whether building, highway, heavy, or residential;
 - project location;

- c. special characteristics of the project (such as elevated or ground storage tank); and
- d. the possibility that more than one decision may apply.

The local government is responsible to ensure that the correct wage decision(s) is chosen and becomes part of the bid document and that the correct wage decision(s) becomes part of the contract between the local government and the prime construction contractor.

If the local government wishes to request guidance from the OCD-LGA regarding the proper wage decision choice, [Exhibit B-3](#), Initial Wage Decision Request, will facilitate the process. The request of an initial wage decision utilizing the expertise of the labor specialists in the OCD-LGA is an option but is not an LCDBG program requirement. The initial wage rate request guidance may be initiated by phone call, fax, or e-mail. If the request is initiated by phone call, the local government should provide OCD-LGA with the information contained in [Exhibit B-3](#). If the request is initiated by fax, complete [Exhibit B-3](#) and fax it to OCD-LGA. If the request is initiated by e-mail, complete the form electronically, and send it to the Labor Compliance Officer of the OCD-LGA.

The local government may choose to obtain the proper wage decision(s) without the OCD-LGA's assistance. Guidance on choosing the proper wage decision and downloading can be found on the wage determination page of SAM.gov. If the local government is unable to download a decision(s), the Labor Compliance Officer of the OCD-LGA should be notified.

[SAM.gov Wage Determinations](#)

OCD-LGA will assist in the process and, if necessary, send the proper initial wage decision to the local government by fax, e-mail, or U.S. Mail.

TEN DAY CALL

- **The Process of Updating Wage Decisions** DOL gathers information on a year-round basis regarding wage decisions and often issues an update of a particular wage decision. An update of a wage decision is referred to as a "modification" or "mod." Less frequently, DOL will issue an entire new series of wage decisions, called supersedeas decisions, having a new wage decision number based on a new series year. For example, supersedeas decisions labeled as year 2003 were issued for Louisiana projects on June 13, 2003. Thereafter, for Louisiana, modifications to the 2003 series were issued on various dates until February 9, 2007, when the 2007 series of supersedeas decisions were issued. Regardless of whether a wage decision is updated by modification or by supersedeas decision, it is required that the proper decision(s) be incorporated into bid and contract documents.
- **The Effective Wage Decision** DOL does not intend that bidders have to take into consideration the constantly changing rates when preparing bids. DOL allows the wage decision in effect 10 days before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be "locked-in" and is also called the "effective" wage decision. If more than 90 days transpires between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the "effective" wage decision and the "lock-in" date becomes the date of the contract award.

- **Ten-Day “Lock-In”** It is the local government’s responsibility to ensure that the wage decision(s) that is in effect a minimum of 10 days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids prior to bid opening, based on an updated wage decision(s). The local government may search the SAM.gov wage determination website to determine if there have been any updates.

[SAM.gov Wage Determinations](#)

The website should be examined no more than 10 days before the bid opening date. It is important to remember that Louisiana law requires that any addenda to a bid package be received at least 72 hours prior to the bid opening. If there has been an update, the local government must obtain (download) the updated wage decision and send a copy by addendum to all who obtained a bid package.

- **Follow-up Ten-Day Options** If, after the bid opening, the award of the contract is delayed by more than ninety days, then another call or search will need to be done. If there has been a wage decision update, the low bidder must agree, in writing, to abide by the wage decision in effect on the date of the contract award. The wage decision in effect on the contract award date must become part of the construction contract.
- **State—45 Days/Davis-Bacon—90 Days** State law requires contracts to be awarded within 45 days of bid opening unless an extension is agreed upon in writing by both parties, whereas the Davis-Bacon requirement to “lock-in” a particular wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening.
- **Failure to Include or Use of Incorrect Wage Decision** Failure to include the effective wage decision in bid documents or contracts will not relieve local governments or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the local government must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract that makes the effective wage decision retroactive to the beginning of construction.

If a supplemental agreement is made, there are two ways to structure the agreement. The contractor may agree to include the proper wage decision retroactively with no additional compensation—especially if the wage rate changes are minor. The contractor may require that a change order be made to compensate for an increase in wages due to the observance of the effective wage decision. Such a change order would be an eligible LCDBG cost but would be subject to available grant funds. If grant funds are not available, local funding may be necessary.

- **Calling Requirement When Using the Small Purchase Method** On rare occasions, the prime contractor may be procured utilizing the “Small Purchase” method provided the low bid is expected to be under \$30,000, and the contract award is less than \$30,000. Note that the Small Purchase method does not have a bid opening date. Consequently, a procedure to ensure compliance with Davis-Bacon has been developed by the OCD-LGA for the Small Purchase method. First, a bid tabulation date must be established in advance. Bidders must be informed of the day on which bids will be tabulated and of the possibility of a wage decision update. Next, a ten-day call or a ten-day search must be made 10 days before the bid tabulation date.

If there is a wage decision update, all bidders must be notified in a timely manner and documentation of notification must be maintained in grant records. Notification when the Small Purchase method is used is not restricted to addendum only but may also be done by telephone call, e-mail, fax, or U.S. Mail. This method will ensure that bidders will have nearly 10 days to make changes to bids based on an update of the wage decision.

VERIFICATION OF WAGE DECISION AND CONTRACTOR ELIGIBILITY

- **Verification of the Wage Decision Choice** Prior to the award of a construction contract to any prime contractor, the local government must obtain verification of the wage decision choice and contractor eligibility. The fact that an optional ten-day call or inquiry was made at an earlier date is not sufficient as verification of the wage decision choice. [Exhibit B-4](#), Verification of Wage Decision(s) and Contractor Eligibility, or Verification form, must be completed and faxed, mailed, or e-mailed to the OCD-LGA for review. The OCD-LGA will review the wage decision that was made part of the bid package, whether by initial inclusion in the bid package or later by addendum and determine whether it was the proper choice. If the OCD-LGA agrees with the wage decision choice, line 22 of the Verification form will be executed by an OCD-LGA staff person and faxed back to the local government. If the OCD-LGA does not agree with the wage decision choice, a Verification form with a signature on line 22 will not be faxed back to the local government until the issue is resolved.

If a determination is made that the wage decision choice was incorrect, the lowest responsive and responsible bidder must agree in writing to incorporate the proper decision as part of the bid documents and resulting construction contract. This agreement is to be obtained in writing prior to the award of the contract (i.e., contract execution). If written agreement cannot be obtained, the local government must reject all bids and rebid the project. A contract award must not be made before receipt of the Verification form as reviewed and executed by the OCD-LGA.

The authorization of a particular wage decision as evidenced by the OCD-LGA staff signature on line 22 of the Verification form will expire if the contract is not awarded within 90 days of the bid opening. If more than 90 days transpires between the bid opening and contract award, the local government is responsible to perform a follow-up ten-day call or ten-day search to determine the effective wage decision. In such cases, the local government must ensure that the wage decision in effect at the date of the contract award is made a part of the contract between the low bidder and the local government. A further Verification form, in addition to the original Verification form, will not be required but may be sent with only the portion that pertains to the wage decision completed. Evidence that the effective decision was utilized will be determined by an examination of the construction contract during a monitoring visit.

The local government remains responsible to ensure the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

- **Verification of Contractor Eligibility** Prior to the award of a construction contract with a **prime** contractor, the local government must obtain contractor clearance from the OCD-LGA. To obtain clearance, the local government must complete and send to the OCD-LGA by fax, mail, or e-mail, a Verification of Wage Decision(s) and Contractor Eligibility form ([Exhibit B-4](#)). To conduct an eligibility review, the OCD-LGA will verify the contractor(s) are not listed on the SAM.gov Exclusions List. The OCD-LGA's search

[SAM.gov Exclusions](#)

of the website only determines whether the contractor is debarred; other types of performance information are not gathered. After reviewing the contractor's eligibility status, the OCD-LGA will indicate the results of the review on the Verification of Wage Decision(s) and Contractor Eligibility form and email the reviewed form to the local government via the email address listed on the face of the form. The local government may also search this site to obtain information, but the public availability of this site does not alter the requirement for the local government to obtain clearance through the OCD-LGA. Prior to contract award, the Grantee must receive the Verification of Wage Decision(s) and Contractor Eligibility form with the OCD-LGA's completed review and execution. Specifically, the execution of line 23 of the Verification form by the OCD-LGA indicates the verification of contractor eligibility.

One exception applies to the timing of the contract award. The date of the contract award may be prior to the local government's receipt of an executed Verification form only if wording in the official minutes of the resolution to award the contract specifies "contingent on verification of wage decision and contractor eligibility." The local government must maintain a copy of the resolution with the required wording as part of the grant records. The contract award would not become effective until the contingency is met although the award date will be listed as the date on which the resolution was made.

All contractors (primes and subs) are required to have a Unique Entity ID (UEI) number that is active on www.sam.gov. The UEI number(s) must be active prior to the start of construction and remain active until construction is complete for each respective contractor. The UEI number(s) for the prime, and any known subs, will be submitted and reviewed at the time of the Verification of Wage Decision & Contractor Eligibility. If a subcontractor is added to the project at a later date, the Grantee is required to submit the subcontractor's UEI number to the OCD-LGA for verification of "active" status. It is the responsibility of the prime contractor to ensure that any subcontractor on the project has an active UEI number prior to the subcontractor beginning work on the project.

[SAM.gov Entity Registration and Unique Entity ID \(UEI\)](http://www.sam.gov)

- **Subcontractor Clearance** The OCD-LGA does not clear subcontractors. Prime contractors must be made aware that it is their responsibility to verify subcontractor eligibility based on factors such as past performance, a yellow page listing, proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements, and an active UEI number. The prime contractor may use the website, www.sam.gov, to determine if a subcontractor has been debarred at the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the OCD-LGA urges prime contractors to closely scrutinize subcontractors. As stated in the previous section, it is the prime contractor's responsibility to ensure that any subcontractors working on the project have an active UEI number prior to the subcontractor beginning work on the project.

At the time of the monitoring review, evidence of active UEI numbers for subcontractors must be provided.

The prime contractor should notify the local government's Labor Compliance Officer of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This allows the local government's Labor Compliance Officer to be knowledgeable of the time frame in which to expect the submission of subcontractor payrolls.

If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated, and the matter reported to the OCD-LGA.

- **Clearance of Consulting and Engineering Firms** Consulting and/or engineering firms who either are new to the LCDBG Program or have not performed services associated with an LCDBG Program within the previous five years must also be cleared. For clearance of professional firms, use [Exhibit D-15](#) (Verification of Professional Services Eligibility) of this Handbook.

CONTRACT AWARD, PRECONSTRUCTION CONFERENCE, ADDITIONAL CLASSIFICATIONS

- **Notice of Contract Award** The local government must submit a completed Notice of Contract Award form to the OCD-LGA for all prime contracts. **The Notice of Contract Award form must be signed by the local government's Chief Elected Official and may not contain a typed signature.** This form must be received by the OCD-LGA within 30 days after award. This form, along with instructions, is provided as [Exhibit B-5](#). Along with the Notice of Contract Award, the local government must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project.

Please provide only the bid tabulation along with the Notice of Contract Award. An array of other documentation, such as the Louisiana Uniform Public Work bid form, minutes of bid opening, etc., should not be packaged with the Notice of Contract Award.

- **Preconstruction Conference** The OCD-LGA **requires** that the local government hold a preconstruction conference with the prime contractor and all available subcontractors prior to the start of construction, at which time they would be advised of their responsibilities and obligations concerning labor standards and **UEI number requirements**. The time of preconstruction conference is normally ideal to initiate the additional classification process as discussed in the following paragraphs.

- **Additional Classifications** A wage decision will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If it is found that a class of laborers or mechanics not listed in the decision will be employed on the project, the contractor must request an additional classification. For instance, a prime contractor installing sewer lines may find that one of its subcontractors needs a boring machine operator, but such a classification is not on the wage decision. Since payrolls must reflect proper classifications for actual work performed, the prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator. Steps to obtain an additional classification include the following:

[Request of Additional Classification and Rate \(Form SF-1444\)](#)

1. The prime contractor requests an additional classification and rate by notifying the local government of the additional classification and rate being requested. The prime contractor will make a request if it determines its own need for an additional classification or if a subcontractor needs the additional classification. The contractor (or subcontractor) would be immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received. While the local government may advise the prime contractor regarding wage rates to be requested, if there is a disagreement, the local government should acquiesce by forwarding a report of the classification at the rate requested by the contractor.

2. The local government prepares and sends a Request of Additional Classification and Rate to the OCD-LGA. The Request of Additional Classification and Rate, which is GSA Standard Form 1444 and identified as [Exhibit B-6](#), should be used to report the additional classification(s). Box 2 will be completed by OCD-LGA. Boxes 3-15 of the form should be completed by the contractor. Box 16 is optional. The bottom portion of the SF-1444, beginning where it states To Be Completed By Contracting Officer, is to be completed by the local government to indicate whether the local government agrees with the contractors proposed classification and wage rate. This form and a copy of the applicable wage decision must be provided as attached documentation and to the OCD-LGA (by mail, e-mail, or fax).

[Request of Additional Classification and Rate \(Form SF-1444\)](#)
 3. The OCD-LGA will review and complete the report and send the form and supporting documentation to DOL.
 4. DOL will respond by approving the requested rate or specifying a higher rate. DOL will send the OCD-LGA an official response to the contractor's request.
 5. The OCD-LGA will forward the DOL response to the local government.
 6. The local government will notify the prime contractor of the results of the DOL response. If the request was on behalf of a subcontractor, the prime will pass the DOL response to the subcontractor.
 7. If the DOL response indicates approval of the requested rate, further action is unnecessary. If the DOL response indicates a rejection of the request and specifies a higher rate, then the higher rate must be paid to all workers at the particular classification retroactive to the first day of work. Restitution is to be paid at the contractor's expense. Local governments as well as contractors should be aware that the time that may elapse between the request and DOL's response may be approximately 60 days.
- **Additional Classifications Prior to Hiring or Mobilization** After a contract is awarded, a construction contractor will often know immediately whether additional classification(s) will be needed. In order to expedite the process, it is permissible for a contractor to request additional classifications before mobilization or hiring of workers. The preconstruction conference often provides an ideal time for contractors to request additional classifications and to provide information helpful to the local government in the completion of the Request of Additional Classification and Rate form, SF-1444.

[Request of Additional Classification and Rate \(Form SF-1444\)](#)
 - **Metal Building Erector as an Additional Classification** Building wage decisions that cover the state of Louisiana do not have the classification of "Metal Building Erector." This classification is often needed in the construction of fire stations because the "Ironworker" classification, which was designed for work at much higher elevations and in more dangerous conditions, is more expensive than the lower wages paid for a Metal Building Erector. In such cases, Metal Building Erector may be requested as an additional classification. The bid documents for fire stations may call attention to bidders regarding the availability of the additional classification of "Metal Building Erector." The rates normally requested for Metal Building Erector are more than the Laborer rate and less than the Ironworker rate.

TERMINOLOGY AND PROCEDURES OF DAVIS-BACON

- **Prevailing Wages** Total minimum compensation, including both the base rate and fringe benefit amount, as required under Davis-Bacon for a given classification of worker as determined by the U.S. Department of Labor in a document called a wage decision.
- **Laborers and Mechanics - Definition** Those workers whose duties are manual or physical as distinguished from managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, whereas laborers perform tasks such as cleaning and shoveling that is not normally thought of as a recognized trade. On a wage decision, a classification that is not “laborer” is automatically considered as a “mechanic” classification. According to HUD, payrolls should report the hours worked and rates of pay for all laborers and mechanics.
- **Contractor’s Guide to Davis-Bacon** The HUD desk guide, “Davis Bacon and Labor Standards: Agency/Contractor Guide” and the “Contractor Guide Addendum,” are recommended (but not required) publications that the local government may distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for Grantees as well as construction contractors and those who prepare contractor payrolls. It provides a brief explanation of issues associated with labor standards and Davis-Bacon in particular. 
- **Site of Work** The site of work as related to Davis-Bacon is limited to the physical place(s) where construction was called for in the contract and will remain when work has been completed, as well as any other site where a significant portion of the building or work is constructed, provided that such construction is for specific use in that building or work and does not simply reflect the manufacture or construction of a product made available to the general public, and provided further that the site is either established specifically for the performance of the contract or project, or is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time.
- **Cleaning** performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.
- **Demolition** work, which is not related to construction, is not subject to the prevailing wage requirements. However, if the demolition is part of a contract for construction of a building or work or if such construction is contemplated as part of a future contract, then the demolition is also within the scope of the DBRA labor standards.
- **Family Members** There are no exceptions to labor requirements on the basis of family relationships. Relatives who are performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.
- **Supply and Installation** The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with, and at the site of, the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. If a supply contract not otherwise covered requires the supplier to install the product, the installation portion of the contract is subject to prevailing wage requirements except when the installation involves only minor construction activity. For example, installation of window shades or draperies would not require Davis-Bacon wage rates; however, installation of an elevator or boiler would.

- **Precutting and Prefabrication** Precutting or prefabrication of parts to be used in the construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.
- **Flaggers** Certain workers, typically called “flaggers” or “traffic directors,” engage in activities such as setting up barriers and traffic cones, using a flag and/or stop sign to control and direct traffic, and/or performing related activities such as helping heavy equipment move in and out of construction zones. Workers performing flagger activities adjacent or nearly adjacent to worksites are working on the “site of the work” and are subject to DBRA.
- **Truck Drivers** Delivery drivers are subject to DBRA wages for onsite time if such time is not *de minimis*. Periods of a few minutes just to drop off materials is considered *de minimis*. However, the total amount of time a driver spends on the site of work during a typical day or work week – not just the time that each delivery takes – should be considered in determining whether a driver’s onsite time was *de minimis*.

ITEMS TO BE POSTED AT THE JOB SITE

The applicable wage decision(s) for the project or the project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily accessible to all employees for the duration of construction. The project Wage Rate Sheet, if used, should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as [Exhibit B-7](#).

Additionally, the following posters must be posted at the job site:

- "Employee Rights Under the Fair Labor Standards Act"
(<http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>)
- "Employee Rights Under the Davis-Bacon Act"
(<http://www.dol.gov/whd/regs/compliance/posters/davis.htm>)
- "Equal Employment Opportunity is the Law"
(<http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>)
- The U.S. Department of Labor’s “Workplace Posters” website may be found at
<https://www.dol.gov/whd/resources/posters.htm>.

To verify posting, [Exhibit B-8](#) (Verification of Posting Requirements) may be used.

EMPLOYEE INTERVIEWS

During construction, the local government must conduct interviews of workers to help determine payroll accuracy and compliance with Davis-Bacon. Interviews should be recorded on the HUD Record of Employee Interview Form (HUD-11), [Exhibit B-9](#).

[HUD Record of Employee Interview Form and Instructions](#)

- **Minimum Interview Requirements** Employees of the following contractors must be interviewed:
 - All prime contractors

- Subcontractors whose contract award is \$100,000 or more
- Any subcontractor where there are a large number of payroll problems

One interview session will sometimes be sufficient to meet minimum interview requirements for the above-listed contractors. When an interview session is conducted, interviews of the employees of other subcontractors, not listed above, must be conducted if they are on the jobsite on that day.

The OCD-LGA has determined that interviews must be conducted for at least 50% of the laborers and at least one worker of each of the remaining classifications present on the jobsite on the day of the interviews. Additional interviews that exceed minimum requirements that the local government deems necessary to ensure compliance with Davis-Bacon are also required.

- **Place of Interview** Workers currently employed may be interviewed during working hours on the job if the interview can be properly and privately conducted on the premises. Care must be taken to arrange the session at a time convenient to the employer and employees. Interviews may also be conducted at other public places. Interviews by mail are no longer acceptable.
- **Initiating the Person-to-Person Interview** The interviewer must confirm his/her identity to the worker. He/she must explain that the project is being constructed with federal assistance, which requires that workers be properly paid and that the purpose of the interview is to determine whether the required wages are being paid. If a worker does not want to give particular information, the interviewer should not insist.
- **Using the Interview Information** After completing the interviews, the information obtained should be compared to the wage decision and payrolls to determine if the workers are classified and being compensated correctly. If necessary, corrective action should be initiated.
- **Example of Application of the Minimum Interview Requirements** A job has three prime contractors and at least four subcontractors. Three of the four subcontracts are for less than \$100,000. The possibility exists that a fence contractor may become a fifth sub as the project nears completion. The fence subcontract will be less than \$100,000.

Employees of all three primes must be interviewed. Employees of the subcontractor whose contract is \$100,000 or greater must be interviewed. If all four of these contractors are not present on the day an interview is scheduled, an additional trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors present on the jobsite on any day on which interviews are done for the four required contractors must be interviewed.

If a subcontractor having a subcontract for less than \$100,000 is not present on the day of an interview, employees of that subcontractor will not have to be interviewed—unless there are payroll problems. If awarded a subcontract for less than \$100,000, the employees of future fence subcontractor will not have to be interviewed—unless there are payroll problems.

HELPERS, APPRENTICES, AND TRAINEES

- **Helpers** “Helpers” as a classification listed on a payroll may not be used on LCDBG projects since such a classification is not found on any of the Louisiana wage decisions. The use of helpers who use tools in assisting mechanics and who are paid below the minimum rates for mechanics is not proper, since an apprentice or trainee is the person who is to perform this type of work. If a person listed as a helper on a payroll were to be found working with the tools of a trade, Davis-Bacon would require such a person to be classified as a mechanic and be paid the amount of a mechanic’s wages for the associated classification listed on the wage decision for time worked as a mechanic retroactive to the first day of work. If a person listed as a helper on a payroll were to be found doing the work of a laborer, Davis-Bacon would require such a worker to be classified as a laborer and paid at least the minimum for the classification of “laborer.”
- **Apprentices** will be permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprentice program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training. If a worker is an apprentice, the contractor must submit a copy of his/her apprenticeship papers with the first payroll on which that worker appears.

Any worker listed on a payroll at an apprentice wage rate that is not a trainee as defined in the following paragraph or is not registered as an apprentice shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed.

The wage rate paid to apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeyman's rate contained in the applicable wage decision. The registered program should also provide information regarding fringe benefit payment levels for apprentices.

Contractors and subcontractors must comply with the apprentice wage and ratio standards of the locality where the work is actually performed. That is the case whether multiple apprenticeship programs are registered in the same state, or the contractor or subcontractor performs work in a locality other than the one in which its program is registered.

- **Trainees** will be permitted to work at less than the predetermined rate for their craft if they are employed and individually registered in a program that has received prior approval through formal certification by DOL. A copy of a trainee's papers must be submitted by the contractor with the first payroll on which the trainee appears.

Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress or a percentage of the associated mechanics rate as listed on the wage decision. The contractor or subcontractor may be required to furnish written evidence of the certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program.

USE OF FORCE ACCOUNT LABOR

[Exhibit B-10](#) (Force Account Recordkeeping) explains required record keeping for force account work. If the local government wishes to use force account, prior approval must be obtained from the OCD-LGA. The following paragraphs briefly discuss Force Account Labor.

- **The Meaning of Force Account Labor** Force Account Labor refers to the use of laborers or mechanics who are employed by the local government, which serves as a contractor for the LCDBG construction project. In such cases, the local government/contractor does not have to pay the Davis-Bacon wage rates but can, instead, pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the LCDBG program.
- **Prerequisites for the Use of Force Account Labor** In order to use force account labor, three criteria must be met: (1) there should be reasonable evidence that construction will cost substantially less than if it were done under contract or that competitive bids cannot be obtained from competent contractors; (2) the local government must have the equipment, supervisory skills, a substantial portion of the required work force, and record keeping system; and (3) the legal counsel for the governing body must make a finding that the project is permissible in accordance with Louisiana laws and does not constitute a major project nor include construction of a building.
- **Labor and Equipment Requirements for Force Account Labor** The local government may hire some employees to work on the specific project to complement existing employees. The cost of using equipment, including the cost of maintenance, operations, and minor field repairs is allowed. For example, the cost to replace a radiator that was punctured accidentally would be an allowable LCDBG cost. However, the cost to replace the engine of a diesel bulldozer on a short-term street project would not be an allowable LCDBG cost. Equipment may NOT be purchased with LCDBG funds. The equipment cost to be allocated to the LCDBG project can be determined by use-allowance or depreciation value. Such allocations of cost must be approved by the OCD-LGA. In rare instances, such as the breakdown of a primary piece of equipment during a street project, the cost of renting a replacement piece of equipment may be allowed with special written approval from the OCD-LGA.
- **Material Cost for Force Account Labor Projects** The costs of materials, including transportation and storage, are eligible costs under the LCDBG program. When the cost exceeds \$20,000, the purchase of materials must be by competitive bid.

PAYROLL TERMINOLOGY, REQUIREMENTS, AND REVIEW PROCEDURES

Instructions prepared by the OCD-LGA are provided with [Exhibit B-11](#) (Payroll Form and Statement of Compliance). DOL also provides a payroll form (WH-347: DBRA Certified Payroll Form) along with instructions on the DOL Wage and Hour Webpage. A Payroll Review Flowchart is provided as [Exhibit B-12](#).

[Form WH-347 Instructions](#)

[Form WH-247](#)

- **Responsibility of Prime Contractor Regarding Subcontractors** The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between

the local government and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions (part of [Exhibit D-2](#), Contract Documents Guide, and numbered within the Exhibit as HUD 4010). If the required provisions are not included in the subcontract, the prime contractor ultimately remains responsible for underpayments and Liquidated Damages of subcontractors.

[HUD 4010 Federal Labor Standards Provisions](#)

When labor standards violations occur, whether at the contract or subcontract level, the local government will require corrections via the prime contractor. It is the prime contractor's responsibility to ensure corrective action by the applicable subcontractor.

- **Weekly Payroll Submission Requirements and Payroll Numbering** It is the weekly responsibility of each contractor, subcontractor, and any lower tier subcontractor to submit to the local government numbered weekly payrolls from the time work begins on the project until the work is completed. If no work is performed on the project during a given workweek, payrolls do not have to be submitted; however, the local government should be informed by phone or e-mail that no work was done. Once work resumes, use the next consecutive number. Example: Work was done during weeks 1, 2, 3, and 7—the payroll number for week 7 would be Payroll #4.

Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the sub's payrolls and may require corrections. The prime forwards the sub's payroll(s) to the local government. Payrolls may be collected by the project engineer for submission to the local government; however, this does not relieve the prime contractor of responsibility for review of payrolls.

- **Payroll Forms** Contractors may use the payroll form, DOL publication WH-347, which can be found on the DOL Wage & Hour Division website. A sample WH-347 has been provided as [Exhibit B-11](#). The payroll preparer may also use instructions tailored to LCDBG projects prepared by the OCD-LGA, which are part of [Exhibit B-11](#). The signature page of WH 347, where a contractor certifies wages and fringe benefits, is referred to by DOL as the Statement of Compliance. The Statement of Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use his own payroll form or other computer-generated form if all required items of **the WH-347 Form** are included, but **the wording of the Statement of Compliance must be verbatim**.
- **Addresses and Social Security Numbers** The first and last name of each worker and last four digits of each worker's social security number are to be listed on each payroll. This procedure will, in nearly all cases, allow unique identification of each worker. In the interest of protecting the worker's privacy, the address and full social security number must not be listed. However, the office or place of recordkeeping of each contractor must retain the full name, address, and social security number of each worker to provide to an authorized person requesting the information.
- **Signature on The Statement of Compliance** The Statement of Compliance, which is the certification portion of payroll form WH347, must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. The signature must be an original signature. In cases where a designated employee signs, the contractor must submit a written authorization signed by an officer of the company.

[Form WH-347 Instructions](#)

[Form WH-247](#)

[Form WH-347 Instructions](#)

[Form WH-347](#)

- **Prompt Submission of Payrolls** The local government should require that all payrolls from the prime contractor and any lower tier subcontractor be submitted by the prime contractor to the local government within seven working days after the payroll ending date. Payrolls must be examined promptly by the local government so that any problems discovered can be corrected early, while contractors are still on the job. Particular attention should be given to payroll review during early stages of construction to ensure that the prime contractor understands and is fulfilling his/her responsibilities concerning payrolls. If acceptable payrolls are not submitted in a timely manner, the local government may withhold contractor payment until acceptable payrolls are submitted.
- **Subcontractor Communication** The local government’s contractual relationship is between the local government and the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, a direct relationship between the local government and subcontractors do not exist.

[Payroll Falsification Indicators](#)

Even though a direct contractual relationship does not exist, the OCD-LGA recognizes the following conditions under which the local government may communicate directly with a lower tier subcontractor regarding labor standards deficiencies:

1. the prime contractor agrees;
 2. the subcontractor is cooperative;
 3. the issues are not complex; and (d) the prime contractor receives a copy of important documentation or is informed of conclusions that result from the communication.
- **Concurrent Jobs** The payrolls must show only the regular and overtime hours worked on an LCDBG project. 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** on the payroll. However, the **gross pay from all job sites** must be shown on the payroll.
 - **Wage Rates and Proper Classification** Payrolls must be checked against the applicable wage decision(s), engineer’s inspection reports (if available), employee interview forms (if available), bid tabulation, and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and “time and a half” rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions.

Parties responsible for meeting or ensuring compliance with Labor Standards requirements, such as construction contractors and administrative consultants working on behalf of the local government, must not utilize or allow utilization of lower paid classifications to perform the work of higher paid classifications. The work of installation of steel or cast-iron pipe with bolt-up flanges is properly the work of the higher-paid “pipefitter” classification and is considered beyond the skill level of the lower-paid “pipelayer” classification. Likewise, the work of installation of electrical panel boxes, conduit, and wiring is properly the work of an “electrician” rather than any other classification such as “carpenter.” The work of coating manholes with an epoxy coating or construction of manholes is properly the work of a classification with a higher skill level and pay than the classification of “common laborer.”

Responsible parties of a project with a considerable amount of manhole rehabilitation or manhole construction should request an additional classification of “manhole rehabilitator” or “manhole builder” if the wage decision covering the project does not have the necessary classifications.

- **Excessive Use of the “Laborer” Classification** Contractors must not be allowed the excessive use of the “laborer” classification on Davis-Bacon covered projects. Since the classification of laborer is often the lowest paid classification on a wage decision, contractors might classify workers as laborers with the knowledge that such workers will actually perform some mechanic work. Payrolls must reflect a reasonable distribution of laborers to mechanics based on the types of work inherent in completing a project.

For instance, a fire station project should not have nearly all workers classified as laborers because the nature of the work of constructing a fire station calls for a mixture of classifications, including backhoe operator, form builder, carpenter, cement finisher, metal building erector, plumber, and electrician in addition to laborer. The judgment that laborers are excessively listed on a payroll can be determined by information gathered from:

- ✓ inspection reports,
- ✓ observations during a site visit of the project,
- ✓ employee interviews, and
- ✓ payroll reviewer knowledge of industry practices regarding worker class distributions.

- **Employees Performing Work in More Than One Classification** A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification with a separate row being utilized for each classification. Such payrolls, called “split” payrolls, may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

An alternate measure, useful in avoiding the extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in a given workday. Example: Joe, a backhoe operator, gets off of a backhoe to try to find a buried water line. He uses a shovel most of the morning—which is the work of a laborer—and finally finds the water line. Later, Joe resumes backhoe work. The employer may list Joe on one row of the payroll as a “backhoe/laborer” if Joe is paid at least the backhoe rate, which is the higher of the two rates.

- **Working Foreman Requirements** A working foreman who devotes more than 20% of his time to laborer or mechanic duties is covered under Davis-Bacon requirements and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage decision. The “working foreman” if paid a flat salary with “salary” designated on the payroll, must be making prevailing wages for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet Davis-Bacon and CWHSSA requirements.

The status of a foreman (working or non-working) should be stated in writing as part of the grant payroll records. Any of the following items will be sufficient to indicate the status of a foreman:

- ✓ A notation on the payroll in the “Comment” section of the Statement of Compliance
 - ✓ A supplementary statement from the contractor
 - ✓ A statement from the inspector associated with the project
 - ✓ A notation on the payroll near or underneath the employee’s name that states “non- working foreman” or “working foreman”
- **Classifications** Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if Davis-Bacon requirements were met. Example: “Operator” is a generic classification; however, “Backhoe,” as on the wage decision, would be a proper classification.
 - **Fringe Benefits** If the wage decision calls for fringe benefits to be paid on behalf of any employee who worked on the project, such payment does not normally have to be verified by contact with the receiving institution. However, if problems are suspected, verification of the payment of fringe benefits should be pursued by the local government.

Fringe benefits do not appear on the worker’s checks but are amounts paid to a receiving institution on behalf of the worker. Sometimes fringe benefits are confused with deductions. For instance, health insurance provided entirely by the employer would be a fringe benefit, whereas health insurance chosen by the employee and subtracted from the employee’s gross wages would be a deduction.

Fringe benefits that are common to the construction industry may be credited toward meeting Davis-Bacon requirements if they are paid to the employee in cash or into an approved fund, plan, or program on the employee's behalf.

When this section of the Statement of Compliance mentions the payment of fringes “in cash,” actual payment in currency is not the meaning of the phrase, but rather, the compensation as dispersed on a payroll check is considered as payment “in cash.”

If a wage decision contains fringe benefits for a classification utilized by a construction contractor, box 4a or 4b of the payroll form/Statement of Compliance (See [Exhibit B-11](#)) must be marked to indicate the method of fringe benefit payment (i.e., in cash or to an approved plan). If there were no classifications used by a construction contractor that required fringe benefits, the boxes should be left blank. Box 4c is used to denote exceptions to box 4a or 4b. For example, if all employees are paid fringe benefits in cash except one who gets payment of fringes into an approved plan, box 4b would have been marked for payment of fringes in cash with box 4c also marked indicating and explaining the exception.

Fringe benefit pay requirements are calculated at a per-hour-worked rate and are not calculated at a “time and a half” rate. However, when fringes are paid in cash the payroll reviewer must be able to differentiate the basic hourly rate from the fringe benefit rate in order to calculate overtime properly. This total hourly compensation (basic hourly rate plus hourly fringe benefits) should be separated into the two components (a) in column 6 of the WH 347 payroll form (b) in the “Comments” section on the Statement of Compliance or (c) by supplementary signed statement from the employer. If the separate components cannot be identified, the entire monetary compensation per

[Form WH-347 Instructions](#)

[Form WH-247](#)

hour must be multiplied times 150% to calculate required overtime minimum rates. The payroll reviewer is not at liberty to guess or try to mathematically calculate the amount of the fringe component—the fringe component must be clearly stated by the contractor. The following is an example in which the basic hourly rate and the fringe benefit per hour is properly identified:

Basic hourly rate on wage decision	\$10.00 per hour
Fringe benefits requirement on wage decision	\$1 per hour fringe benefits
Workweek	52 hours
Regular Pay + Overtime Pay + Fringe Benefits	= Gross Pay
(40 x 10) + (12 x 10 x 1.5) + (52 x 1)	= \$632

Flexibility is allowed in the allocation of how fringe benefits are paid. Using the above example, the contractor has flexible payment options such as (a) pay all of the \$632 in cash; (b) pay \$580 in cash and \$52 in fringes; or (c) pay more or less than \$580 in cash and more or less than \$52 in fringes with the total paid to be \$632.

In contrast, if a total compensation rate of \$11.00 were identified with the components of the \$11.00 not identified, then the proper overtime calculation required by the LCDBG program for the previous example would be:

(40 x 11) + (12 x 11 x 1.5)	= \$638
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The first result, \$632, was due to calculation based on the proper separation of the basic hourly rate and fringes. The second result, \$638, occurred based on calculations without proper separation of basic hourly rate and fringes.

The basic procedure to follow under the LCDBG program depends on which condition occurs.

Condition One: If the payroll differentiates properly, then overtime at 150% of the basic rate must be paid while fringes are paid only at 100% for each hour worked regardless of whether an hour was an overtime hour or a straight-time hour. **Condition Two:** If the payroll does not differentiate what portion of the compensation is the basic rate and what portion is the fringe benefit, then the overtime compensation must be calculated at 150% of the sum of the base rate plus fringe.

It is the responsibility of the contractor to provide payrolls that properly differentiate the basic hourly rate from the fringe benefit amount. If proper differentiation is not initially provided, the payroll reviewer may obtain a supplementary statement or corrected payroll(s) from the contractor that indicates the breakdown between basic hourly rates and fringes for each worker. The supplementary statement must be signed by an authorized person and clearly identify which payroll(s) is associated with the supplementary statement.

- **Verifying Fringe Benefits** Fringe benefits may be paid in cash and such payment(s) can be determined by examining the face of the payroll. When fringe benefits are paid in cash, box 4b of the Statement of Compliance must be checked. Fringe benefits that are paid to an approved plan are not usually posted on the face of the payroll.

When fringe benefits are paid to an approved plan, box 4a of the Statement of Compliance must be checked. Checking box 4a is an acceptable indication that fringe benefits, equal to the amount stated on the wage decision, were paid. Additional verification normally is not necessary. However, if the basic hourly rate is less than required on the wage decision with the claim that fringes are making up the balance due in order to meet the total Davis-Bacon requirements, verification of the payment of fringe benefits may be considered. If problems are suspected, verification of the payment of fringe benefits may be necessary.

An approved plan will have an institution(s) that receives fringe payments on some type of regular basis. Fringe benefit payments into an approved plan may be on a weekly, monthly, or quarterly basis but not semi-annually or annually. The applicable contractor will be the source of contact information for the receiving institution. Verification should include the following: (a) institution's name(s), (b) phone number(s), (c) date(s) contacted, (d) results of the inquiry, (e) person(s) contacted at the institution, and (f) the name of the person who made verification for the local government. Verification may be by phone, written correspondence, computer printout, or fax from a receiving institution, computer printout or fax from a union, or a copy of cancelled check(s) from the contractor written to a receiving institution, or a computer printout from the contractor.

- **Deductions** A deduction is an amount subtracted from a worker's gross wages and must be reviewed to determine if they are permissible. Permissible deductions by law include court ordered deductions, FICA, and federal or state income taxes. Deductions not required by law, such as union dues, 401K deductions, loan payback amounts or uniforms, may be made only with the permission of the employee. The employee must sign a statement that authorizes deductions. The Payroll Deduction Authorization form provided as [Exhibit B-13](#) should be used.
- **Overtime Calculation – Low Basic Hourly Rate but Adequate Total Compensation** Total compensation, (prevailing wages) as indicated on wage decision(s), is required. There is some leeway given regarding the breakdown of total compensation between the two components of the basic hourly rate and the hourly fringe benefit. When calculating overtime pay where total compensation is adequate there is one notable restriction: if the basic hourly rate on the payroll is less than the basic hourly rate on the wage decision then the higher basic hourly rate on the wage decision must be used in the calculation of minimum overtime pay.
- **Payroll Certification of the Self-Employed Contractors** The self-employed contractor has special requirements regarding the certification of payrolls for his/her own wages. HUD has provided additional guidance in Labor Relations Letter, LR-96-01. [HUD Guidance LR-96-01](#)

A self-employed laborer or mechanic (or group of working partners) who has no other employees working on the job is not authorized to sign his/her own payroll and Statement of Compliance. Instead, such a person, often called a "working subcontractor," must be listed on the prime's (responsible employer's) payroll. For example, Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot certify his own payroll for an LCDBG project.

When a working subcontractor has no crew, the minimum information needed on the responsible employer's payroll regarding the working subcontractor are name address, classification(s), hours worked, estimated hourly pay, and estimated gross pay. Deduction amounts for social security and federal taxes of the working subcontractor are not the responsibility of the prime contractor, and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required.

The Statement of Compliance should indicate box 4c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees. The explanation for box 4c could be “Fixed price contract, fringes, and deductions not measurable” or similar language.

Sometimes it may be confusing and/or technically impractical for a prime contractor to list on the payroll a working subcontractor along with regular prime contractor employees. In such cases, the prime contractor may prepare a separate weekly payroll listing only one person, the working subcontractor, using the WH 347 payroll form.

[Form WH-347 Instructions](#)

[Form WH-247](#)

Whatever method of compensation is utilized, such as a piece work or a weekly contract draw for performance, the amount of estimated weekly compensation divided by the actual hours of work performed for that week must result in an “effective” hourly wage that is not less than the prevailing hourly rate for the type of work involved.

A special exception for truck owner-operators is available. Truck owner-operators must be reported on the prime’s (responsible employer’s) weekly payrolls but, unlike other classifications, do not need to show the hours worked or rates—only the notation “owner- operator.” The truck driver having an owner-operator exception should not be confused with a truck driver who is an employee of a prime contractor.

In contrast, owners of a business having at least one crew member can certify their own payroll.

For example, if Joe hires at least one employee on a given project, he could certify his own wages as well as the employee’s wages. Joe would be considered an owner of a business working with his crew. As such, Joe would list his name, work classification(s) including “owner,” daily hours worked, and total hours worked. Owners who certify their own wages do not need to list a rate of pay or amount earned.

- **Liquidated Damages** “Liquidated Damages” is a predetermined amount that is paid as a penalty for failure to meet a specified requirement. Liquidated Damages, relative to the review of payrolls in the LCDBG Program, will mean the penalty amount calculated for overtime violations under the CWHSSA. Due to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, as of January 16, 2023 the pre-determined penalty is \$31 per worker, per day for overtime violation(s).

[DOL Civil Money Penalty
Inflation Adjustments](#)

NOTE: The penalty amounts paid for overtime violations to a specified government entity, such as HUD for LCDBG projects, as Liquidated Damages are separate and distinct from wage restitution paid to workers.

CORRECTIVE ACTIONS REGARDING LABOR STANDARDS VIOLATIONS

- **Inadequate Payroll Information** The payroll format, **WH-347** from the Wage and Hour Division of DOL, contains all the necessary information for payroll reporting. Alternate forms may be used by contractors but must contain the necessary information as on WH-347. If a contractor’s alternate form is not sufficient, the contractor will be required to provide the necessary information on an acceptable form or provide a supplementary statement.

[Form WH-347 Instructions](#)

[Form WH-247](#)

Payrolls that are incomplete, such as those which lack classifications or rates of pay, will require the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

- **Handwritten Corrections On Face of Payroll By Reviewer Not Allowable** The local government, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. Such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources (including scratch-throughs, “white-out” etc.) do not allow the reader certainty as to who made the corrections. If the local government needs to provide written clarification of a minor payroll item, a note with the reviewer’s name and date may be attached.
- **Three Scenarios of Payroll Review** Three scenarios regarding payroll review and corrective actions are identified in [Exhibit B-12](#), the Payroll Review Flowchart. The three scenarios are as follows:
 - Scenario One: Error that requires restitution
 - Scenario Two: Error that does not require restitution
 - Scenario Three: Error not detected

Each scenario triggers a unique set of events. Review the Payroll Review Flowchart, [Exhibit B-12](#), for an overview of the processes involved.

- **Notice to Contractor when Restitution is Required** Scenario One deals with payroll error that requires restitution due to underpayment of wages. Underpayment may result from Davis-Bacon violation(s), CWHSSA overtime violation(s), or both. The local government must promptly notify the prime contractor in writing that payment of back wages is required. See [Exhibit B-14](#), Notice of Restitution Due. This notice should identify the name of the prime contractor and the applicable subcontractor, the underpaid worker(s), the correct job classification and wage rate, dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need to make restitution by using a Certified Correction Payroll (as discussed below).

If overtime violations under CWHSSA exist, the notice to the contractor should also identify a calculation of Liquidated Damages and inform the contractor to either pay them or request a waiver.

- **Certified Correction Payroll** Under Scenario One a payroll that reflects restitution paid under Davis-Bacon and/or CWHSSA is called a “Certified Correction Payroll.” Such a payroll will be prepared by the employer and the Statement of Compliance will be signed by the authorized signatory. The signature on the Statement of Compliance designates the payroll a “certified” correction payroll. A Certified Correction Payroll will only list those workers to whom restitution is paid. The monetary amounts listed, wages and deductions, reflect restitution amounts paid and should not indicate amounts paid and listed on past payrolls.

Payroll problems that require the employer to prepare a Certified Correction Payroll include the following:

- Wage rates on the payrolls do not meet Davis-Bacon requirements.
- Wage rates on the payrolls do not meet CWHSSA requirements.
- Worker classifications are incorrect, incomplete, or not in accordance with the applicable wage decision resulting in restitution due.
- Calculations are in error and result in underpayment of wages.

A Certified Correction Payroll will record the difference between the amount paid and the required amount that should have been paid. The deficiency would be multiplied by the applicable number of hours worked at the lower-than-allowable rate. Example: If a worker was paid \$10.00 per hour and should have been paid \$11.00 per hour for 100 hours during three different non-overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll would be $\$1 \times 100 = \100 .

The contractor may submit a Certified Correction Payroll for each applicable workweek or for multiple workweeks. A Certified Correction Payroll, if prepared for multiple weeks, should indicate the weeks covered. Example: Weeks 2 through 8 and 11. In contrast, a Certified Correction Payroll, if prepared for one week at a time, must be numbered the same as the original payroll for that workweek but must indicate the appropriate revision number. Example: "Payroll #2—Revision #1," "Payroll 3, Revision 1," and so forth.

In most cases the Statement of Compliance, as part of the Certified Correction Payroll, will be sufficient to attest that restitution was made. Cancelled checks, employee initials, or an employee statement are not routinely required as additional proof of payment of restitution. If problems are suspected, additional proof may be required.

- **The Use of Corrected Payrolls to Demonstrate Restitution** Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:
 - A corrected payroll is always for one weekly period, whereas a Certified Correction Payroll may cover multiple weekly periods.
 - A corrected payroll lists all workers who worked on a project during a weekly period, whereas a Certified Correction Payroll lists only workers to whom restitution was paid.
 - A corrected payroll lists the total of original disbursements and disbursements made for the payment of restitution, whereas the Certified Correction Payroll will list only the disbursements made for the payment of restitution.

If a contractor chooses to provide a corrected payroll to demonstrate restitution rather than a Certified Correction Payroll, such a provision is acceptable; however, a Statement of Compliance having a later signature and date must accompany the corrected payroll. The corrected payrolls should be numbered so as to be associated with the original payrolls, such as "Payroll 2, Revision 1."

- **Calculation of Liquidated Damages** Scenario One continues assuming that there was restitution due that involved not only Davis-Bacon but also overtime violation(s) under CWHSSA. Overtime rates must be paid at 150%, or time and a half, of the basic hourly rate. Under CWHSSA, Liquidated Damages are computed at the rate of \$27 per worker for each calendar day he or she worked in excess of 40 hours in a week without payment of overtime rates.

For instance, if workers worked six days a week for twelve hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should have started on day four and continued on day five and day six. The Liquidated Damages calculation would be \$81 per worker. Liquidated Damages would be calculated in addition to the payment of wage restitution.

- **Steps in Calculation, Assessment, Payment, or Appeal of Liquidated Damages** The local government calculates restitution and Liquidated Damages due and notifies the contractor by traceable correspondence (e-mail, fax, or letter). The contractor, having received notification, must make restitution via a Certified Correction Payroll (or a corrected payroll with certification) and must either pay the Liquidated Damages or request a waiver. The contractor is to notify the local government of the choice by traceable correspondence.

If payment is the contractor's choice, the contractor must use a wire transfer to make payments. Please contact the Labor Compliance Officer at the OCD-LGA for instructions regarding a wire transfer. Such procedures involve completing a special deposit-slip form, which is sent to HUD to enable a receiving account to be established. The contractor will be notified when the wire transfer can be received by an active account at HUD and will be sent a form that is equivalent to a deposit slip. The contractor will use a financial institution to conduct the wire transfer. After the wire transfer and proper notification/documentation of such payment to all parties concerned, the contractor's responsibility for payment of Liquidated Damages will have been met. The financial institution will normally charge the contractor a fee for making the wire transfer.

If requesting a waiver is the contractor's choice, the contractor is to send the local government written communication explaining the amount of Liquidated Damages for which a waiver is being requested and the reason(s) why a waiver is requested. HUD may grant a waiver for two reasons:

- The error was unintentional and due care was exercised.
- A mathematical mistake was made.

The local government will forward the letter to the OCD-LGA, who will send the letter to the appropriate HUD agency. Following HUD's response, the OCD-LGA will communicate HUD's response to the local government by traceable correspondence. The local government is to communicate the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of Liquidated Damages, then labor standards requirements regarding liquidated damages will have been met. If HUD does not approve the request for the waiver, contact the Labor Compliance Officer at the OCD-LGA for further instructions. The contractor will have 60 days to appeal the notice from HUD.

- **The Use of Corrected Payrolls Where Restitution Is Not Due** Under Scenario Two, as shown in [Exhibit B-12](#), restitution will not be due but some type of correction not involving restitution is necessary. A corrected payroll may be used to reclassify workers, correct math errors, clarify monetary amounts, revise improper dating, etc. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll. Example: "Payroll 4, Revision 1." The contractor may line through the mistakes and provide the corrections in handwriting or use software or other means to produce a corrected payroll. A new signature and date on a Statement of Compliance must be provided. A copy of the original Statement of Compliance with a new signature and date above the original signature may be provided, or the contractor may prepare a new Statement of Compliance, signed and dated, for any week having a corrected payroll.
- **Supplementary Statements** A supplementary statement from the contractor may be obtained to clarify not only major issues involving restitution or classification clarification, but also minor issues that do not involve restitution. Situations where a supplemental statement would be acceptable include: (a) the payroll on which

an employee appears does not have the last four digits of the Social Security number and (b) an incorrect employee name. The supplementary statement should be dated, signed by the authorized payroll signatory, and also identify the associated payroll number(s). A Statement of Compliance does not accompany a supplementary statement.

- **No Error Detected** Scenario Three is identified as the scenario under which no error is detected.
- **Labor Standards Enforcement Report** The Payroll Review Flowchart, [Exhibit B-12](#), is a diagram illustrating the three scenarios of payroll review and illustrates why and when a Labor Standards Enforcement Report becomes necessary.

A Labor Standards Enforcement Report ([Exhibit B-15](#)) is required when restitution cumulatively reaches \$1,000 or more for any contractor or subcontractor. Instructions for completing the form are included in [Exhibit B-15](#). The Labor Standards Enforcement Report is to be completed and sent to the OCD-LGA when most or all of the corrective action has been completed. The Labor Standards Enforcement Report should be sent during construction and before closeout documents are prepared.

- **Final Wage Compliance Report** Under all three scenarios, as the flow chart indicates, the last item regarding labor standards, the Final Wage Compliance Report (found in [Exhibit E-6](#), Program Completion Report), must be sent to the OCD-LGA. The Final Wage Compliance Report is to be sent to the OCD-LGA along with other closeout documents. It must be approved by the OCD-LGA Labor Compliance Officer before the grant can be conditionally closed out. If there are unresolved labor compliance problems at that time, the OCD-LGA Labor Compliance Officer will assist the local government in determining how to correct such problems.
- **Reporting Restitution under Davis-Bacon and CWHSSA** Restitution reported on the Labor Standards Enforcement Report or the Final Wage Compliance Report must be correctly classified. The Davis-Bacon component of restitution will involve an underpayment rate for each hour worked at the deficient rate. The CWHSSA component of restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked. The following example is provided:

A laborer worked 48 hours in one workweek. He was paid \$10.00 per hour for 40 hours and \$15.00 per hour for eight hours. The wage decision calls for \$11.00 per hour with no fringe benefits. Most payroll preparers would immediately know that \$52.00 of restitution is due; however, some may not realize the proper classification of each of the components of restitution. The \$52.00 in restitution is properly calculated and classified as follows:

48 x \$1.00	= \$48.00	Davis-Bacon component of restitution
8 x \$0.50	= \$ 4.00	CWHSSA component of restitution

WITHHOLDING FUNDS FROM CONTRACTOR BASED ON NON-COMPLIANCE WITH LABOR STANDARDS

If violations regarding restitution have not been corrected within 30 calendar days from the date of the first notice of underpayment, the local government may withhold funds from the prime contractor. Only an amount considered necessary to ensure payment of underpaid wages (and Liquidated Damages, if applicable) may be withheld to meet Labor Standards requirements. The local government must notify the prime contractor of the withholding and provide a second notice of underpayment.

The local government must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed. If restitution is not made within 30 days of the second notice of underpayment, or if there is disagreement regarding the finding of wages owed, the OCD-LGA must be notified.

If the OCD-LGA determines it appropriate, the local government will be notified to disburse wages owed from the withheld funds to the respective workers to whom they are due. Should such an occasion arise, the OCD-LGA must be contacted for information on the proper procedure for disbursement of funds.

UNFOUND WORKERS

If all affected workers cannot be located and restitution made either by the contractor directly or through use of withheld funds, enough funds must be reserved to pay those workers the wages owed. Efforts should continue to be made to locate workers; however, if they have not been located by the time the closeout of the grant occurs, the local government must return the withheld funds to the OCD-LGA. A check made payable to the Louisiana Division of Administration, and a Labor Standards Enforcement Report ([Exhibit B-15](#)) covering the remaining withheld funds must be submitted to the OCD-LGA before the grant will be closed.

FALSIFICATION

If intentional falsification by a contractor is suspected, the local government's Labor Compliance Officer must not return the payroll to the contractor for correction and submittal. The OCD-LGA must be informed of the suspected falsification.

WITHHOLDING FUNDS FROM GRANTEE BASED ON NON-COMPLIANCE WITH LCDBG REQUIREMENTS

If a Labor Standards violation(s) does occur that results in the local government not being in compliance with the LCDBG program, the OCD-LGA may suspend payment on the next "Request for Payment." For example, if the local government fails to ensure the timely submission of contractor payrolls by the prime contractor (and any lower-tier subcontractor), then the local government may be considered as being in non-compliance with LCDBG program requirements.

PAYROLL RECORD RETENTION

Payroll records must be retained by the contractor for a period of three years from project completion. The local unit of government must keep all program files, including weekly payroll reports, until three years after OCD-LGA closes the program year from which funds were awarded with HUD. Grantees will be notified by OCD-LGA. The payroll records must be available at all times during the retention period for inspection by representatives of the OCD-LGA, HUD, and DOL.