

# Chapter 7

## Labor Compliance





# Chapter Seven: Labor Compliance

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Introduction

Chapter 7: Labor Compliance provides information on the labor standards applicable to Community Development Block Grant (CDBG) projects and other related topics. Construction that is funded in whole or in part with CDBG funds must comply with all applicable federal labor standards requirements. This chapter describes the policies and procedures that must be followed to ensure compliance with these laws and regulations.

Labor Compliance Officer

Appoint a Labor Compliance Officer. This individual will be responsible for coordinating and ensuring compliance with all federal and state labor standards.

Supporting Materials

- Attachment 7-1 Request to Use Force Account Labor
- Attachment 7-2 West Virginia Code Article 22
- Attachment 7-3 Project Wage Rate Sheet
- Attachment 7-4 Labor Standards Complaint Procedure
- Attachment 7-5 Final Wage Compliance Form

Federal Labor Laws

**Applicability of Federal Labor Provisions**

Most construction projects, including alteration, repair or demolition, funded in whole or in part with federal funds, must comply with federal labor standards provisions. The three primary federal laws governing labor standards are the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act; and the Copeland Act (Anti-Kickback Act).

- **Davis-Bacon Act**  
**(40 USC 276a – 276a-5)**  
[www.dol.gov/whd/regs/statutes/dbra.htm](http://www.dol.gov/whd/regs/statutes/dbra.htm)

The Davis-Bacon Act requires payment of locally "prevailing wages" and fringe benefits to laborers and mechanics employed on federally-funded contracts in excess of \$2,000 for construction, alterations, or repair of public buildings or public works. Congress extended the Davis-Bacon prevailing wage requirements to other federal laws which provide federal assistance for construction through grants, loans, loan guarantees and insurance rather than direct contracts for construction with federal agencies. Section 110, Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301) requires the payment of prevailing wages set in accordance with the Davis-Bacon Act.

- **Contract Work Hours and Safety Standards Act, as Amended**  
**(40 USC 327-333)**  
[www.dol.gov/whd/regs/statutes/safe01.pdf](http://www.dol.gov/whd/regs/statutes/safe01.pdf)

The Contract Work Hours and Safety Standards Act, as amended, requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 hours in a workweek. This act also requires the

assessment of liquidated damages at the rate of \$10 per day for each day that each laborer and mechanic worked without payment of the required overtime compensation. This act has no job site limitation.

- **Copeland Act ("Anti-Kickback" Act)**  
(18 USC 874 and 40 USC 276c)  
[www.dol.gov/compliance/laws/comp-copeland.htm](http://www.dol.gov/compliance/laws/comp-copeland.htm)

The Copeland Act (Anti-Kickback Act) makes it a crime for anyone to require laborers or mechanics employed on a federal or federally assisted project to "kickback" any part of their wages. The act also requires every contractor and subcontractor to submit weekly payroll reports that include a "Statement of Compliance." The act also regulates payroll deductions from wages.

### **Section 3 of the Housing and Urban Development Act of 1968** [www.hud.gov/section3](http://www.hud.gov/section3)

Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD-assisted financed project to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area.

- The [Section 3 Business Registry](http://www.hud.gov/section3biz) is a tool to help grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. The Section 3 Business Registry can identify prospective firms to be notified about the availability of local HUD-funded contracts. The site can be searched by state, city, county, or type of business at [www.hud.gov/section3biz](http://www.hud.gov/section3biz).

#### Labor Standards Compliance Files

Comprehensive labor standards files must be established for each construction contract. At project completion, each file should contain the following items:

- Copies of applicable federal and state wage rates.  
[www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html) and  
[www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx](http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx)
- Verification of 10-day check of wages prior to bid opening.  
([www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html))
- Copy of labor standards complaint procedure.
- Bid advertisement with Affidavit of Publication.
- Weekly certified payrolls (signed), Statements of Compliance and evidence that payrolls were checked against the applicable wage determinations.  
([www.dol.gov/whd/forms/wh347.pdf](http://www.dol.gov/whd/forms/wh347.pdf))
- Additional classification requests.

- Copies of the Record of Employee Interview.  
([portal.hud.gov/hudportal/documents/huddoc?id=11.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf))  
([www.hud.gov/offices/adm/hudclips/forms/files/11SP.doc](http://www.hud.gov/offices/adm/hudclips/forms/files/11SP.doc)) *Spanish version*
- Verification of contractor eligibility to work on a federally funded project.  
([www.sam.gov](http://www.sam.gov))
- Evidence that on-site interviews were checked against the payrolls and the applicable wage determination.
- Evidence that the Davis-Bacon wage rates and state wage rates were posted at the construction site.
- Evidence of restitution/resolution of identified discrepancies.
- Complaints from workers, if any, and actions taken.
- Liquidated damages assessed, appeals, if any, and outcome.

#### Authorization to use Force Account Labor

In the event that the Grantee decides to use its own, full-time, competent employees to construct a project funded with CDBG funds, the Grantee must submit a **Request to Use Force Account Labor on a CDBG Project (Attachment 7-1)**, to the West Virginia Development Office (WVDO) for review and approval before construction can begin.

Please note that the Grantee must use full-time employees that are currently on their payroll. State law prohibits Grantees from hiring additional employees to complete work on a project funded with CDBG funds. In order to reimburse the Grantee for costs associated with labor performed by its own employees on a CDBG project, timesheets must be maintained and submitted with each Request for Payment where reimbursement of labor costs is requested.

#### Federal and State Wage Determination

The Grantee must secure copies of both federal and state wage rates.

##### A. Federal Wage Determinations

Applicable federal wage determinations must be obtained online at [www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html).

If the project is assisted by another federal granting agency which requires that wage rate determinations be secured through another process, such procedures are acceptable provided that all federal requirements for securing wage rate determinations and modifications are met and that such documentation is entered into the project file.

## 1. Federal General Wage Determinations

The Wage and Hour Division of the United States Department of Labor issues Davis-Bacon wage determinations also known as general determinations or area determinations.

The term "wage determination" is defined as including not only the original decision but any subsequent decisions modifying, superseding, correcting or otherwise changing the rates and/or scope of the original decision.

General wage determinations have been issued and are now in effect for most counties for each general type of construction.

- General wage determinations are issued in the publication, *General Wage Determinations Issued Under the Davis-Bacon And Related Acts*.
- Each year a new annual edition of this publication is issued in the month of February. Each annual edition supersedes general wage determination issued previously and new wage decision numbers reflect the new edition number.
- Throughout the year, weekly updates or modifications are issued to the general wage decisions. Each week, commonly on Friday, a notice is published in the *Federal Register* that lists the general wage determinations being issued, modified or withdrawn, i.e., WV20140003 with nine modifications.
- These determinations are effective from their date of publication without a stated expiration date or until they are modified in the *Federal Register*.
- Four types of General Wage Determinations are: Building Construction; Residential Construction; Heavy Construction; and Highway Construction All Agency Memorandum No. 130 – HUD.  
[www.wdol.gov/aam/AAM130.pdf](http://www.wdol.gov/aam/AAM130.pdf)

**Please note:** To request additional classifications to a general wage determination, the Report of Additional Classification and Rate form must be utilized ([portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12573.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12573.doc)), which is further discussed under Task 9, Review of Project Wage Sheet and Applicable Wage Classifications before Start of Construction.

## 2. State Wage Rates

State wage rates must be obtained directly from the West Virginia Secretary of State's Office by contacting the Administrative Law Division at 304-558-6000 or by accessing the wage rates on the internet at [www.wvsos.com](http://www.wvsos.com).

State wage rates are issued annually and published in January of each year. Unlike the federal wage determination, state wage rates are not subject to modification throughout the year.

- Three types of state wage rates: Building Construction; Heavy Construction; and Highway Construction.

### 3. Prevailing Wages

The higher of the wages listed for each job classification on the federal wage determination or the state wage rates is the prevailing wage and **must** be paid during the project.

Note: In 2015, the state transferred responsibility for the determination of prevailing wages from the West Virginia Division of Labor to Workforce West Virginia. The West Virginia Secretary of State will continue to publish current and future wage rates. Exemptions to prevailing wage regulations are as follows:

- If a contract is under \$500,000 and there is federal funding in the project, only the federal rates will apply.
- If a contract exceeds \$500,000 and there is federal funding in the project, the prevailing wage – the higher of the state or federal rate – will apply.

#### Bid Document Review

Compliance requirements for Labor Standards are included in the language of the federal statutes that formulate the Labor Standards. This language must appear in all bid advertisements and bid and contract documents. The Grantee and its designated Labor Compliance Officer must be familiar with compliance requirements and assume the responsibility for ensuring that compliance and monitoring is undertaken. See HUD Handbook 1344, Rev. 1., Federal Labor Standards Compliance in Housing and Community Development Programs: [www.tinyurl.com/HUDFLSR](http://www.tinyurl.com/HUDFLSR)

#### Wage Rate Review

Ten calendar days before the opening of bids, the Grantee must determine if there have been any modifications to the wage determination(s). The Wage Determination link can be found at: [www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html). All modifications to the wage determination(s) are effective unless published less than 10 calendar days before the opening of bids.

- If the federal wage rates have been modified, an addendum to the bid document must be issued to all contractors who have requested bid packages at least five days prior to bid opening.

Please note that failure to conduct a 10-day wage check prior to bid opening will result in a monitoring finding. It will also make the Grantee responsible for making restitution to any affected employees if prevailing wage rates have not been paid.

#### Wage Rate Lock-In Date

For contracts entered into pursuant to competitive bidding procedures, the bid opening date “locks-in” the federal wage determination and the state wage rates utilized in the bid document provided that the contract is awarded within 90 days. If the contract is awarded more than 90 days after bid opening, the contract award date “locks-in” the federal wage determination and the state wage rates.

## Wage Sheet and Classification Review

### Review of Project Wage Sheet

Prior to the start of construction, all contractors are required to submit a **Project Wage Sheet (Attachment 7-3)**. This sheet will list all work classifications that the contractor will utilize to perform work under the contract. The form will also designate if the prevailing rate is a federal or state rate, list the basic hourly rate with the fringe benefit rate and the total of both. The Project Wage Sheet must be reviewed and approved by the project engineer with respect to the work classifications to be used for the construction phase of the project. Also, the Project Wage Sheet must be reviewed and approved by the Grantee's labor compliance officer with respect to the wage rates and fringe benefits rates that are to be paid for each work classification.

### Additional Classifications

Any class of laborers or mechanics not listed in the initial wage determination shall be additionally classified in conformance with the wage determination. If additional classifications under the federal wage determinations are required, the Labor Compliance Officer will submit a "Report of Additional Classifications and Rate" form, located online at: ([portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12573.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12573.doc)), to the WVDO.

The WVDO will forward the request to the HUD Area Office for submission and approval by the United States Department of Labor. A report on additional classification actions must be approved, modified or disapproved by the United States Department of Labor's Administrator of the Wage and Hour Division, Employment Standards Administration, within 30 days of receipt.

### Minimum Criteria for Additional Classification Requests

Additional classification will be approved only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determination;
- b. The classification is utilized in the area by the construction industry; and
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

## Labor Standards Compliance Procedure

The Grantee must adopt a written Labor Standards Complaint Procedure (**Attachment 7-4**) that addresses how all complaints related to labor standards will be handled and resolved. A copy of the procedure must be maintained in the Grantee's labor files. Also, the Labor Compliance Officer's name, address and telephone number must be posted in a prominent location during the entire course of work at the project work site.

## Worksite Postings

The Labor Compliance Officer must secure and post the following work site posters at the site of work:



1. **NOTICE TO ALL EMPLOYEES**  
[www.dol.gov/whd/regs/compliance/posters/davis.htm](http://www.dol.gov/whd/regs/compliance/posters/davis.htm)
2. **EQUAL EMPLOYMENT OPPORTUNITY**  
[www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm](http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm)
3. **JOB SAFETY AND HEALTH PROTECTION**  
[www.osha.gov/Publications/poster.html](http://www.osha.gov/Publications/poster.html)

The Labor Compliance Officer must also post legible copies of the applicable wage determination at the work site. Work site posters and the applicable wage determinations must be displayed in a prominent location and protected from the weather during the entire course of work. Also, the wage determinations must be accessible to employees at all times.

#### Wage Payment Compliance

##### **Weekly Certified Payrolls and Basic Records**

When construction begins, the contractor is required to submit certified (signed) weekly payrolls on the **U.S. Department of Labor Wage and Hour Division Payroll Form-WH-347** ([www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm)).

**The Grantee must monitor this requirement to ensure that weekly certified payrolls are submitted and records are kept.**

The Grantee must submit the **first two certified payroll reviews** from each contractor or subcontractor working on a CDBG project to the WVDO. The WVDO will verify that the certified payroll reviews ensure that the contractor and subcontractor(s) have met minimum state and federal labor compliance requirements.

Payroll records shall contain the employee's full name and identifying number (**last four digits of the social security number**). The payroll records must also reflect correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, bona fide plans or programs for providing fringe benefits, written evidence of registered or certified apprentice or trainee programs, registration of apprentices or trainees and ratios, and wage rates prescribed in these programs.

Signed weekly certified payrolls must be submitted for each week in which any contract work is performed. The primary contractor is responsible for the submission of copies of payrolls by all subcontractors. Each payroll must be accompanied by a Statement of Compliance (with Davis-Bacon and Copeland Anti-Kickback Act provisions) signed by the contractor or subcontractor. If the signatory on the Statement of Compliance is not an officer of the contractor's or subcontractor's company, the chief executive officer must prepare a letter on company letterhead assigning signatory authority to another individual, such as a payroll officer, to sign on his/her behalf.

##### **Payment of Fringe Benefits**

Whenever the minimum wage rates prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor

shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent.

Any payment of fringe benefits other than cash payment must be verified by the agency which received the payment. The contract file must contain a listing provided by the bona fide fringe benefit plan for each employee, verifying the payment made.

### On-Site Interviews

**The Grantee must conduct on-site interviews using a HUD Form 11, Record of Employee Interview [[portal.hud.gov/hudportal/documents/huddoc?id=11.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf)].**

The interview must include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance. **The Grantee's Labor Compliance Officer should conduct such on-site interviews with all prime contractors and subcontractors during the first month of construction. Thereafter, employee interviews must be conducted a minimum of once every other month (one time in 60-day intervals) or as needed if any discrepancies are found between the on-site interviews and the payroll review.** Labor interviews may be conducted more frequently depending on the number of subcontractors working on a project.

The Labor Compliance Officer must compare on-site interviews against applicable payrolls. Any action needed to correct any discrepancies should be undertaken immediately with the contractor and reported to the WVDO as soon as possible after the action and again at the completion of the contract. The Labor Compliance Officer must sign and comment in the payroll examination section on each interview form following review and approval of the applicable certified payroll.

### Freedom of Information Act (FOIA) Requests

If a Freedom of Information Act request is submitted for copies of certified payrolls, all identifiers that include employee name, address and social security numbers must be removed.

### Failure to Use Wage Determinations/Use of Incorrect Determination

The failure to include the required wage determination(s) and appropriate labor standards provisions in bid documents or contracts will not relieve the Grantee or contractors from potential liabilities for enforcement actions. Any failure to include a wage determination must be immediately rectified. The United States Department of Labor may issue a wage determination(s) after contract award or after the beginning of construction if the Grantee has failed to include a wage determination in a contract or has used a wage determination which by its terms clearly does not apply to the contract.

### Use of Wrong Determination

If an incorrect wage determination is included in bid and/or contract documents, the WVDO may request the United States Department of Labor to issue a wage determination which shall be applicable to a contract after contract award or after the start of construction. Also, a new wage determination must be issued if the Grantee has inaccurately described the project or its location in its request for a wage determination. The Grantee shall either terminate the contract with the invalid wage determination or shall make the valid wage determination retroactive to the beginning of construction through a supplemental agreement or through change order and shall compensate the contractor for any increases in wages resulting from such change.

The method used in implementing the valid wage determination and adjustment in contract price, where appropriate, should be in accordance with applicable contract law. Where a clerical error was made in a published general wage determination or issued project wage determination, the United States Department of Labor will issue a letter of inadvertence. Corrections shall be included in any bid documents or in any ongoing contract retroactively to the start of construction.

### **Failure to Pay Prevailing Wages**

In the event of a contractor's or subcontractor's failure to pay all or part of the wages required by the contract to any laborer or mechanic, including any apprentice or trainee, employed or working on the site of work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, the Grantee may after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. The WVDO must immediately be notified of all such actions.

### **Failure to Pay Overtime Compensation**

In the event of violation of the overtime provision of the Contract Work Hours and Safety Standards Act, the contractor and any subcontractor responsible shall be liable for the unpaid wages and any liquidated damages.

The Grantee shall upon its own action or upon written request from the WVDO withhold or cause to be withheld any money payable on account for work performed by the contractor or subcontractor. Also, money payable to the same contractor may be withheld from other federal contracts. This also applies to any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor. The amount of money withheld may be determined by the amount necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages. The WVDO must be immediately notified of all such actions.

### **Debarment Proceeding**

Whenever any contractor or subcontractor is found to be in aggravated or willful violation of the labor standards provisions of any applicable statutes or who have been found to have disregarded required obligations to employees under the Davis-Bacon Act, such contractors or subcontractors shall be ineligible to receive any federal contracts. The WVDO must be immediately notified of all such actions.

Certified Payroll Submission
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### **The Grantee must submit the first two certified payroll reviews from each contractor or subcontractor working on a CDBG project.**

The WVDO will complete a desk review of the certified payroll reviews to ensure that the contractor and subcontractor(s) have met minimum state and federal labor compliance requirements. If any deficiencies are noted during that review, technical assistance will be provided by the WVDO to assist the Labor Compliance Officer to resolve the deficiencies.

### Semi-Annual Labor Standards Enforcement Report - HUD Form 4710

In compliance with 29 CFR Part 5, Section 5.7(b), the U.S. Department of Labor requires that the WVDO provide a semi-annual report on compliance with, and the enforcement of, labor standard provisions of Davis-Bacon and its related acts.

The WVDO will notify the labor compliance officer that the Semi-Annual Labor Standards Enforcement Report [portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12575.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12575.doc) must be submitted for all construction contracts awarded during two reporting periods: April 1st to September 30<sup>th</sup>, and October 1st to March 31st. Failure to submit a report will result in a finding of noncompliance.

### Final Wage Compliance Report

After completion of the project, the Grantee must submit a Final Wage Compliance Report (**Attachment 7-5**). This form is contained in the Final Performance Report, which is utilized for project closeout.

For additional information concerning questions related to labor compliance issues or for clarification of labor compliance standards please contact the WVDO.

### Reference Materials

- Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects  
[www.tinyurl.com/HUD-LR-4812](http://www.tinyurl.com/HUD-LR-4812)
- HUD's "On the Mark!" series  
[portal.hud.gov/hudportal/HUD?src=/program\\_offices/labor\\_standards\\_enforcement/olr\\_otm](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olr_otm)
- HUD's Labor Relations Letters  
[www.hud.gov/offices/adm/hudclips/letters/lrletters.cfm](http://www.hud.gov/offices/adm/hudclips/letters/lrletters.cfm)
- U.S. Department of Labor Regulations  
[www.dol.gov/whd/](http://www.dol.gov/whd/)
- U.S. Department of Labor Minority Participation Rates  
[www.dol.gov/ofccp/TAquides/TAC\\_FedContractors\\_JRF\\_QA\\_508c.pdf](http://www.dol.gov/ofccp/TAquides/TAC_FedContractors_JRF_QA_508c.pdf)