



# CDBG-DR

## Davis-Bacon and Related Acts Policy

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PUERTO RICO DEPARTMENT OF HOUSING  
CDBG-DR PROGRAM GUIDELINES  
**Davis-Bacon and Related Acts Compliance Policy**  
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	September 3, 2020	Original version.

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## 1 Overview

The Puerto Rico Department of Housing (**PRDOH**) is the administering agency of a multifaceted effort to rebuild and restore the communities of Puerto Rico after the devastation sustained during Hurricanes Irma and María on September 6 and September 20, 2017. The recovery activities are funded by Community Development Block Grant - Disaster Recovery (**CDBG-DR**) funds received by PRDOH from the United States Department of Housing and Urban Development (**HUD**).

As recipients of HUD financial assistance, PRDOH and its contractors and subcontractors working within the PRDOH CDBG-DR Program are subject to the requirements of the Davis-Bacon Act of 1931 (**DBA**), 40 U.S.C. § 3141 *et seq.*, which guarantees fair wages, benefits, and overtime to employees while working on government-funded construction, alternation, or repair projects in excess of \$2,000.

## 2 Applicability

The purpose of this policy is to set forth clear guidance and procedures for complying with the Davis-Bacon Act and any other Federal statutes providing for the determination of prevailing wage rates and fringe benefits to corresponding PRDOH CDBG-DR programs, projects and activities. The Davis-Bacon Act requires the payment of prevailing wage rates to all laborers and mechanics on Federal government construction contracts in excess of \$2,000. The Davis-Bacon and Related Acts (**DBRA**) determine applicability of Davis-Bacon to Federally-assisted construction contracts. The Housing and Community Development Act of 1974 (**HCD**), 42 U.S.C. § 5301 *et seq.*, Section 110 of the Act, determines the DBRA applicability to CDBG-DR.

In order to achieve compliance with HUD federal requirements, this policy applies to all construction contracts greater than \$2,000 under the CDBG-DR program, unless otherwise specified in this Policy. Section 110 of the HCD states that “[a] laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a--276a-5). The Act further provides that Section 5310 (Section 110 of the Act) “[s]hall apply to the rehabilitation of residential property only if such property contains not less than eight (8) units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, as amended<sup>1</sup>, and section 3145 of title 40.” 42 U.S.C. § 5310.

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<sup>1</sup> Eff. May 24, 1950, 15 FR 3176, 64 Stat. 1267, as amended May 21, 1970, Pub. L. 91-258, Title I, Sec. 52(B)(7), 84 Stat. 235.

### 3 Definitions

- **Apprentices:** Refers to: (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (**DOL**), Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency<sup>2</sup> recognized by the Bureau, or (ii) a person in the first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. 29 C.F.R. § 5.2(n)(1).
- **Building or Work:** Includes construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 (**Housing Act of 1937**), 42 U.S.C. § 1437 *et seq.*, and the Housing Act of 1949, 42 U.S.C. § 1441 *et seq.*, in the construction or development of the project. 29 C.F.R. § 5.2(i).
- **Business Owner:** The term “employee employed in a bona fide executive capacity” includes any employee who owns at least a bona fide twenty percent (20%) equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. 29 C.F.R. § 541.101.
- **Construction, prosecution, completion, or repair:** All types of work done on a particular building or work at the site thereof, including, without limitation,

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<sup>2</sup> Through the Executive Order No. 2016-032 from July 2016, former governor Alejandro García Padilla designated the Puerto Rico Department of Labor and Human Resources (**PRDOLHR**) as the State Apprenticeship Agency.

altering, remodeling, painting and decorating, the transportation of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor. 29 C.F.R. § 5.2(j).

- **Contract:** Any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards. 29 C.F.R. § 5.2(h). It is important to distinguish that an independent contractor may be covered by DBRA if the job performed is related directly to the CDBG-DR project.
- **Davis-Bacon Act:** Federal law requiring payment of local prevailing wages and fringe benefits as determined by the DOL on certain federally funded projects.
- **Davis-Bacon and Related Acts:** Those Acts extending the Davis-Bacon Act provisions to Federal agencies that provide financial assistance for public works construction through grants, loans, guarantees, and insurance.
- **Fringe benefits:** Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as some contributions to training funds. Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.<sup>3</sup>
- **Helper:** A distinct classification of "helper" will be issued in wage determinations (**WD**) applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where (i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination; (ii) The use of such helpers is an established prevailing practice in the area; and (iii) The helper is not employed as a trainee in an informal training program. A "helper" classification will be added

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<sup>3</sup> U.S. Department of Housing and Urban Development (January 2012). *Davis-Bacon Labor Standards – A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*, p. 2-7.



to wage determinations pursuant to 29 C.F.R. § 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination. 29 C.F.R. § 5.2(n)(4).

- **HUD Handbook:** HUD Handbook No. 1344.1 REV-2 entitled Federal Labor Standards Requirements in Housing and Urban Development Programs. This Handbook prescribes the policies, procedures and responsibilities of HUD Office of Labor Relations staff and program participants in the administration and enforcement of labor standards provisions related to HUD programs. This issuance contains twelve chapters and associated appendices dealing, primarily, with labor standards matters relating to the Davis-Bacon and Related Acts. The issuance also addresses the procedures and responsibilities of HUD Office of Labor Relations Staff, public housing agencies and Tribally-designated housing entities in the administration and enforcement of labor standards provisions relating to prevailing wage rates determined by HUD pursuant to the U.S. Housing Act of 1937 and the Native American Housing Assistance and Self Determination Act of 1996 (each as amended).<sup>4</sup>
- **Laborer or mechanic:** Those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act (**CWHSSA**), 40 U.S.C. § 3701 *et seq.*, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than twenty percent (20%) of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent. 29 C.F.R. § 5.2(m).
- **Management:** Includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees;

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<sup>4</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs, Handbook 1344.1 Rev. 2*, [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/sech/13441](https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441)

planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures. 29 C.F.R. § 541.102.

- **Prevailing wage:** The wage paid to the majority (more than fifty percent (50%)) of the laborers or mechanics in the classification on similar projects in the area during the period in question. 29 C.F.R. § 1.2(a)(1).
- **Property:** One or more buildings on an undivided lot or on contiguous lots or parcels that are commonly owned and operated as one rental, cooperative or condominium project.<sup>5</sup>
- **Public building/public work:** Includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. 29 C.F.R. § 5.2(k).
- **Site of work:** Is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project. 29 C.F.R. § 5.2(l)(1). It is the place where the Davis-Bacon wage rates apply. It can include other adjacent or virtually adjacent property used by a contractor or subcontractor in the construction of the project.
- **Trainee:** A person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. DOL, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration. 29 C.F.R. § 5.2(n)(2).
- **Volunteer:** An individual who performs service for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, on a HUD-assisted or insured

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<sup>5</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, Appendix II-6-2, <https://www.hud.gov/sites/documents/13441AII-6SECH.PDF>.

project which is subject to a requirement to pay prevailing wage rates. An individual shall be considered a volunteer only where their services are offered and without pressure and coercion, direct or implied, from an employer. An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers. 24 C.F.R. § 70.3(A).

- **Wage determination (WD):** A list of wage rates and fringe benefit rates for each classification of laborers and mechanics determined by DOL to be prevailing in a given area for a particular type of construction. The wage determination includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. 29 C.F.R. § 5.2(q).
- **Wages:** Means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law. 29 C.F.R. § 5.2(p).

#### **4 Davis-Bacon and Related Acts Labor Standards**

The Davis-Bacon Act, as amended, is applicable to all construction contracts (building, heavy, highway, or residential) greater than \$2,000, unless the program's authorizing legislation contains exceptions.<sup>6</sup> It applies to contractors and subcontractors with federally funded contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works.

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<sup>6</sup> As indicated in the Continuing Appropriations Act, 2018 (Pub. L. 115-123) and the Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L. 115-56), waivers or alternative requirements for provisions of any statute or regulation may be granted except for requirements related to labor standards.

These contractors and subcontractors must pay laborers and mechanics working under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the local areas where such work is to be performed.<sup>7</sup> The DOL sets forth the principal set of regulations for labor rules in 29 C.F.R. Parts 1-7:

- 29 C.F.R. Part 1 – Regulates wage rate determination
- 29 C.F.R. Part 3 – Copeland “Anti-kickback” Act of 1934, 18 U.S.C. § 874 and 40 U.S.C. § 3145, defines anti-kickback regulations; obligation of weekly payrolls and governs payroll deductions
- 29 C.F.R. Part 5 – Defines Labor Standards Regulations
- 29 C.F.R. Part 6 – Regulates administrative proceedings to enforce Labor standards
- 29 C.F.R. Part 7 – Regulates non-compliance

All covered contracts<sup>8</sup> must include Davis-Bacon and other labor standards clauses<sup>9</sup> and the applicable wage determinations. Different wage treatment is permitted under Davis-Bacon for apprentices and trainees. Apprentices and trainees may be employed at less than the determined rates if they are registered and employed pursuant to an apprenticeship program certified by DOL or if they are participating in a trainee program certified by DOL, respectively. The basic provision of Davis-Bacon and Related Acts are that contractors and subcontractors must pay laborers and mechanics employed directly upon the site of work, at least the locally prevailing wages (including fringe benefits).

Davis-Bacon project contractors, subcontractors and recipients must pay laborers and mechanics and submit their certified payroll records on the WH-347 form – Payroll Certification<sup>10</sup> or similar accompanied by a WH-347 Statement of Compliance bearing an original signature, weekly to the PRDOH. Each statement of compliance must be sent **seven (7) days** after payroll has been paid to [davisbacon@vivienda.pr.gov](mailto:davisbacon@vivienda.pr.gov).

By executing a CDBG-DR Subrecipient Agreement (**SRA**) with PRDOH, Subrecipients agree to administer and enforce all Davis-Bacon labor standards requirements and accept the responsibilities described in this policy.

Those contractors or subcontractors that are found to be in violation of Davis-Bacon compliance, may be subject to debarment from future contracts for up to **three (3)**

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<sup>7</sup> For Davis-Bacon Act Wage Determinations applicable to Puerto Rico, access: [https://beta.sam.gov/search?index=wd&keywords=puerto%20rico&is\\_active=true&sort=-relevance&date\\_filter\\_index=0&date\\_rad\\_selection=date&wdType=dbra&page=1](https://beta.sam.gov/search?index=wd&keywords=puerto%20rico&is_active=true&sort=-relevance&date_filter_index=0&date_rad_selection=date&wdType=dbra&page=1).

<sup>8</sup> A covered contract refers to a contract that meets an Acts' requirements.

<sup>9</sup> HUD provides different forms containing Davis-Bacon labor standards provisions applicable to various HUD programs. Handbook 1344.1 identifies HUD Form 4010 - Federal Labor Standards Provisions, which can be accessed at: <https://www.hud.gov/sites/documents/4010.PDF>, as the applicable form to CDBG programs.

<sup>10</sup> DOL WH-347 Form can be accessed at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>.

**years**, contract payments may be withheld in sufficient amounts to satisfy unpaid wages and liquidated damages that result from these violations, and in extreme cases, may be grounds for termination of the contract. 29 C.F.R. § 5.12; 29 C.F.R. § 5.5 (a)(2); 29 C.F.R. § 5.5 (b)(3) liquidated damages \$26.00 per day per violation.

## 4.1 Davis-Bacon Objectives

PRDOH has established the following objectives in order to administer and enforce Davis-Bacon requirements:

- **Apply prevailing wage requirements properly** - Make certain that prevailing wage and reporting standards are applied where required. Ensure that any exemptions, exceptions or limitations are identified.
- **Support labor standards compliance** - Provide training, technical support and oversight to program participants, including contractors and subcontractors, to ensure that program participants understand their obligations under Federal labor standards.
- **Monitor contractor compliance** - Conduct reviews of certified payroll submissions and other information to ensure that employers comply with labor standards requirements including the payment of prevailing wages to laborers and mechanics.
- **Investigate probable violations and complaints** – Thoroughly explore any evidence of violations, especially allegations of underpayment. Ensure full resolution of substantiated violations.
- **Pursue debarment and other available sanctions against repeat labor standards violators** - Implement a no-tolerance policy toward employers and any other program participants who repeatedly violate prevailing wage requirements and/or fail to properly carry-out their labor standards responsibilities.

## 4.2 Other Applicable Labor Standards

The Davis-Bacon Act is applicable along with numerous other federal, state and local laws that govern wage requirements; all together referred to as Davis-Bacon and Related Acts.

### 4.2.1 Fair Labor Standards Act

The Fair Labor Standards Act of 1938 (**FLSA**), 29 U.S.C. § 201 *et seq.*, governs such matters as Federal minimum wage rates and overtime (**O/T**). These standards are generally applicable to any labor performed and may be pre-empted by other (often more stringent) Federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. The authority to administer and enforce FLSA provisions resides solely with DOL. The federal minimum wage in 2020 is \$7.25 per hour, but in many cases,

employees are subject to a higher minimum wage by virtue of a state or local statute requiring the payment of a higher minimum wage rate.

#### 4.2.2 Contract Work Hours and Safety Standards Act

The CWHSSA applies to both direct Federal contracts and to federally assisted contracts in excess of \$100,000 where those contracts require or involve the employment of laborers and mechanics and where Federal wage standards (e.g., Davis-Bacon or HUD-determined prevailing wage rates) are applicable. CWHSSA provisions apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor. CWHSSA also applies to maintenance laborers and mechanics employed by contractors or subcontractors engaged in the operation of Public Housing Agency (**PHA**), Tribally Designated Housing Entity (**TDHE**), and Indian Housing Authority (**IHA**) developments.

CWHSSA provides that all O/T hours<sup>11</sup> must be compensated at a rate not less than one-and one-half times the regular basic rate of pay (i.e., premium pay). Where CWHSSA O/T provisions are applicable, compensatory time in lieu of premium pay for O/T hours is not permissible. In the event of O/T violations, the CWHSSA renders the contractor liable to the underpaid workers for wage restitution and to the United States for liquidated damages computed at the rate of ten dollars (\$10) per violation.<sup>12</sup> Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

#### 4.2.3 Copeland "Anti-Kickback" Act

The Copeland Act of 1934, *supra*, concerns three (3) facets of prevailing wage compliance:

1. The "anti-kickback" provision makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which they are entitled under their

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<sup>11</sup> O/T hours are defined as hours worked in excess of forty (40) during any workweek on the CWHSSA-covered project site. *HUD Davis-Bacon Labor Standards – A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects* (January 2012), p. 1-1.

<sup>12</sup> *HUD Davis-Bacon Labor Standards – A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects* (January 2012), 1-1.

CWHSSA also does not apply to construction or rehabilitation contracts that are not subject to Federal prevailing wage rates (e.g., Davis-Bacon wage rates or HUD-determined rates for operation of public housing and Indian block grant assisted housing). However, even though CWHSSA overtime pay is not required, Fair Labor Standards Act (FLSA) overtime pay is probably still applicable. (See also Labor Relations Letter SL-95-01, CWHSSA Coverage threshold for overtime and health and safety provision, available on-line at the HUD Labor Relations Library at: <https://www.hud.gov/sites/documents/LR95-01.TXT>.)



contract of employment. Violations of the anti-kickback provision are punishable by a fine or by imprisonment up to **five (5) years**, or both;

2. Associated DOL regulations restrict payroll deductions to those that are permissible without DOL approval as explained at 29 C.F.R. § 3.5; deductions that require advance DOL approval are explained at 29 C.F.R. § 3.6;
3. The Act also requires the submission of weekly payroll reports and statements of compliance (certified payroll report (**CPR**)) by all contractors and subcontractors engaged in such construction, prosecution, completion or repair. The willful falsification of a payroll report or Statement of Compliance may subject the employer to civil or criminal prosecution under 18 U.S.C. § 1001 and 31 U.S.C. § 3729, and may also be a cause for debarment.

## **5 Applicability for CDBG-DR Funded Programs and Contracts**

### **5.1 Disaster Relief Contracts**

The Davis-Bacon Act applies to direct federal contracts for “construction, alternation, and/or repair of a public building or public work”. 40 U.S.C. § 3142(a). As a result, Davis-Bacon applies to construction contracts awarded by federal agencies and to federally assisted contracts where the funds authorizing statute requiring payment of prevailing rates in accordance with Davis-Bacon. An exception to Davis-Bacon applicability are disaster relief funds under the Federal Emergency Management Agency’s (**FEMA**) principal relief authority, the Robert T. Stafford Disaster Relief Act of 1988 (Stafford Act), 42 U.S.C. § 5121 *et seq.* These are not subject to prevailing wage requirements under Davis-Bacon. FEMA grants for disaster relief include low-interest loans for the repair or replacement of personal property, business disaster loans to fund repair or replacement of real estate, and assistance to state or local governments to pay costs of rebuilding a community’s damaged infrastructure. In contracts under the Stafford Act, it is not required to include any clauses for compliance with Davis-Bacon.

### **5.2 Non-Federal Match Program Exceptions**

PRDOH has identified certain instances, like the Non-Federal Match Program, where the requirements in the Davis-Bacon Act are not applicable to the project. In these instances, a Davis-Bacon Exemption Statement must be completed. Each program will provide details and instructions on all applicable exemptions as well as provide Exemptions Statement documents for these situations:

- Project does not meet Davis-Bacon criteria if:
  - Project is under the statutory minimum (\$2,000 or less), Davis-Bacon requirements are not activated. A project cannot be partitioned into

smaller projects with amounts of \$2,000 or less, in order to avoid the activation of Davis-Bacon.

- Project does not involve any construction, alteration, or repair of public buildings or public work.
- Documentation shows work complete – When either FEMA or the financial documents indicate all work has been completed prior to program implementation, Davis-Bacon requirements do not apply.
- When work is limited to debris removal, which is not part of a construction, alteration, and/or repair of a public work or building, Davis-Bacon requirements do not apply.
- Emergency work completed prior to the execution of the grant agreement between Puerto Rico and HUD, which was executed on September 20, 2018. Any work completed prior to the execution of the grant agreement does not activate any Davis-Bacon requirements.
- Force account exemption – When a government agency decides to perform construction work utilizing its own employees, as a general rule, the work is not subject to Davis-Bacon as government agencies are not considered contractors or subcontractors.

### **5.3 Sole Proprietor / Bona Fide Owner**

As a general rule, Davis-Bacon applies to laborers and mechanics which are specifically defined in the Act. This definition states that persons who are employed in executive, administrative, or professional capacity, are not subject to the Davis-Bacon requirements included in 29 C.F.R. Part 541. When it is the individual owner, operating their own bona fide business, performing the work of a laborer or mechanic, that person does not have to pay themselves the applicable prevailing wage as set forth by Davis-Bacon.

Regulations set forth in 29 C.F.R. Part 541 define and delimit exemptions for different types of employees. An employee employed in a bona fide executive capacity, which includes an “employee who owns at least a bona fide twenty percent (20%) equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management (as defined in 29 C.F.R. § 541.102)”,<sup>13</sup> is considered a bona fide exempt executive not subject to DBRA wage requirements.

A person with a twenty percent (20%) or greater interest in a business who is required to work long hours, makes no management decision, supervises no one and has no authority over personnel, does not qualify for the executive exemption. HUD Handbook

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<sup>13</sup> 29 C.F.R. § 541.101.



1344.1 Rev 2 Chapter 11, 11-2, 2/2012.<sup>14</sup> HUD does not permit non-exempt owners of businesses who work alone (e.g., self-employed subcontractors, sole proprietors) to certify to the payment of their own wages. Such owners must be carried on the certified payroll report of the responsible employer, i.e., the entity under whose auspices the person(s) is engaged on the covered work. HUD Handbook 1344.1 Rev2 Chapter 11, 11-20(B), 2/2012.<sup>15</sup>

It is the responsibility of the contracting entity, during the contract process, to determine if the person they are contracting with is truly part of an exempt category, as part of this process, all documents and records must be maintained and become part of the contract file.

#### **5.4 Executive Order No. 13658**

Under Executive Order No. 13658 – “Establishing a Minimum Wage for Contractors” (February 12, 2014) and Federal Register, Vol. 84, No. 182, 84 FR 49345, issued on September 19, 2019, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015.

Executive Order No. 13658 applies to contracts entered into by the “Federal Government,” defined in the regulations as an “agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States.” 29 C.F.R. § 10.2.

Executive Order No. 13658 does not cover contracts entered into by the District of Columbia, any Territory or possession of the United States, or any independent regulatory agency, as defined in 44 U.S.C. § 3502(5).

If a contract is covered by Executive Order No. 13658, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by Executive Order No. 13658, and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 C.F.R. § 5.5(a)(1)(ii) (or the Executive Order No. 13658 minimum wage rate, if it is higher than the conformed wage rate). The Executive Order No. 13658 minimum wage rate will be adjusted annually. Please note that this Executive

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<sup>14</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, <https://www.hud.gov/sites/documents/13441C11SECH.PDF>.

<sup>15</sup> Id. <https://www.hud.gov/sites/documents/13441C11SECH.PDF>.

Order No. 13658 applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 C.F.R. § 5.1(a)(2-60).

Additional information on contractor requirements and worker protections under Executive Order No. 13658 is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

For PRDOH and all recipients and contractors, this rate will not apply to contracts awarded.

### **5.5 PR Executive Order No. 2018-033**

Puerto Rico's Executive Order No. 2018-033, ensures local Puerto Rican residents are provided a fair wage standard in light of a very low federally established Davis-Bacon wage standards relative to the rest of the U.S.<sup>16</sup>

Section 3 of the Executive Order No. 2018-033 states "[i]n the event that the amount of the contract is greater than two (2) million dollars, any construction project financed in whole or in part with funds from the Government of Puerto Rico, its agencies, instrumentalities and public corporations must have a Project Labor Agreement for its employees."

Section 6 states, the provisions of this executive order shall be part of the communications issued by the agencies requesting proposals or procurements for the hiring of any matter subject to the provisions of this executive order. Contracts between the government and its contractors should include the requirements of this executive order.

Section 7 states, this executive order will be interpreted to the maximum extent possible within the provisions of the law that apply to the contracting of non-professional services. Provided that for the purposes of this executive order a construction project commissioned by the government to comply with the operations, functions, services or responsibilities of an agency, instrumentality or public corporations of the government of Puerto Rico or for the design, development, financing, maintenance or operation of its facilities will be considered as a construction project partially financed by said government.

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<sup>16</sup> PR Executive Order No. 2018-033, <https://www.trabajo.pr.gov/docs/Boletines/OE-2018-033.pdf>, shall only apply to the first CDBG-DR Grant Agreement, September 17, 2018, which can be accessed at: <https://www.cdbg-dr.pr.gov/en/download/cdbg-dr-grant-agreement-1-5b-2/?wpdmdl=3415&refresh=5e8c9106766de1586270470>. The second CDBG-DR Grant Agreement, February 21, 2020, which can be accessed at: <https://www.cdbg-dr.pr.gov/en/download/cdbg-dr-grant-agreement-1-7b-8-2b/?wpdmdl=8661&refresh=5e8c909856f461586270360>, however, states "with respect to the construction labor costs resulting from the minimum wage established by Commonwealth of Puerto Rico Executive Order 2018-033, the grantee shall not take into account the minimum wage rate established by Executive Order 2018-033 for construction contracts entered by the Commonwealth when determining whether a wage cost is reasonable under the factors at 2 C.F.R. § 200.404."

## 6 Davis-Bacon Compliance Roles and Responsibilities

All direct PRDOH contractors, Subrecipients and contractors of Subrecipients are responsible for factoring in costs associated with Davis-Bacon and Related Acts compliance and the corresponding wage determinations. The PRDOH is responsible for promoting and monitoring contractor compliance with Davis-Bacon standards.

### 6.1 PRDOH Oversight Responsibilities

As the grantee, PRDOH will execute oversight and monitoring of the applicable programs for Davis-Bacon by exercising the following functions:

1. The CDBG-DR PRDOH has designated staff responsible for labor standards compliance that will be responsible for the review of certified payrolls on a weekly basis for applicable programs and projects and will work in coordination with PRDOH Points of Contact (**POC**'s) to communicate feedback to recipients and/or their contractors.
2. Confirm the specific labor standards provisions applicable to the project (e.g. Davis-Bacon wage and reporting requirements, CWHSSA).
3. Ensure that the current applicable Davis-Bacon wage decision and contract standards are incorporated into the contract for construction (e.g. construction specifications).
4. Conduct a pre-construction kickoff conference with prime contractors and subcontractors. Provide technical support to recipients, prime contractors and subcontractors concerning prevailing wage and reporting requirements.
5. Identify and process requests for additional classifications and wage rates, as needed, for the construction of the project.
6. Ensure compliance with requirements by performing periodic "spot-check" reviews of certified payroll submissions and related submissions, including comparison of on-site interview data against certified payroll reports (**CPRs**), for compliance with the labor standards and requesting additional information when needed or rejecting submitted payrolls as needed.
7. Implementing a system for recipients and contractors to add in their payroll information on a weekly basis.
8. Maintaining policies such as the current document, procedures, forms, and records that demonstrate Subrecipients and contractors are informed/have been provided technical assistance regarding labor standards.
9. Ensure that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in Federal programs by implementing methods for verification of contract signing, execution and updates from other PRDOH programmatic areas.

10. Require Subrecipients using CDBG-DR funds to adopt these policies for recipients to include labor standards and wage determination clauses in all construction contracts subject to labor standard provisions.<sup>17</sup> See Appendix A for the Clause.
11. Receive and transmit labor standard enforcement reports to the DOL and/or to HUD.
12. Enforce the referral of potential criminal/complex investigations, debarment, and/or CWHSSA liquidated damages to HUD by providing HUD with a summary of the findings, schedule of back wages due, issued notices to the contractor, notice of intent to assess liquidated damages, and implementing the final order of liquidated damages.
13. Establish a complaints process and assure worker complaints are addressed promptly.
14. Monitor subrecipient and contractor performance.
15. Enforce corrective actions for identified errors including, but not limited to:
  - a. Misclassification of Laborers and Mechanics.
  - b. If the actual pay is less than full prevailing wage, including fringe benefits for all hours worked (including overtime).
  - c. Copy or Fax Statement of Compliance.
  - d. Inadequate recordkeeping, such as not counting all hours worked by an individual or not recording hours worked in two or more classifications in one day.
  - e. Incomplete Payroll Information.
  - f. Failure to submit weekly payrolls – including for weeks of no work.
  - g. One Statement of Compliance for Multiple Work Weeks.
  - h. Other Deduction Authorizations not completed.
  - i. Unauthorized Signature on Statement of Compliance.
  - j. Apprenticeships not properly documented.
16. Identifying potential willful violations through spot-check reviews and/or employee interviews. Follow-up on potential willful violations through employee questionnaires and other techniques to identify cases for investigation.
17. Prepare reports on all enforcement activity.
18. Dispose of deposit/escrow accounts established for labor standards purposes.
19. Establish and maintain, for not less than **three (3) years** after the completion of construction or final disposition of any compliance issues, whichever occurs last,

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<sup>17</sup> Labor Standards - Davis-Bacon and Related Acts Clauses to include in construction contracts. HUD form 5370 excerpt listed below in Appendix A.

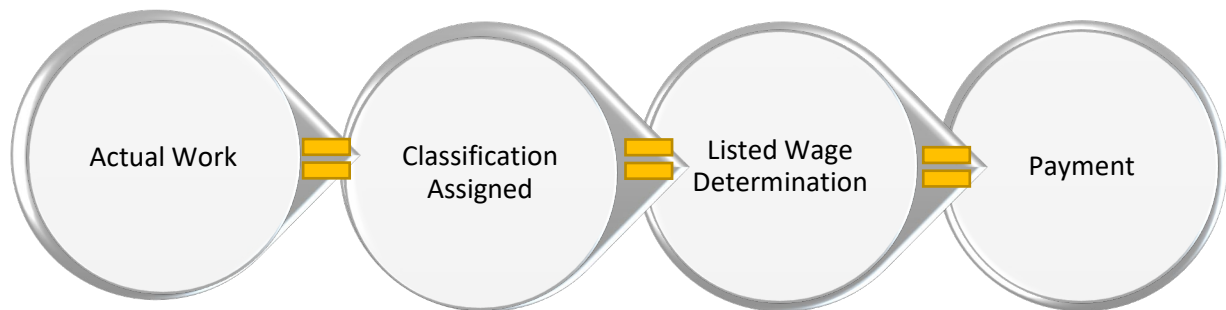
full documentation of all labor standards administration and enforcement activities.

### 6.1.1 Monitoring Interviews

PRDOH may arrange to conduct interviews<sup>18</sup> (HUD-11 form) in order to validate payroll information. They may be conducted by HUD and/or the PRDOH personnel with a worker on-site, after a period of observation and compared to the corresponding certified payroll submitted to verify the accuracy of the information. Any information shared by the worker is held confidentially unless authorized to share by the worker.

PRDOH will use this in order to cross check the actual work being performed to the classification assigned to the correct listed wage determination and review the payment being released to the worker to ensure compliance. If any discrepancies are found, they shall be investigated and resolved.

When monitoring and investigating compliance, the following logical framework for determining and evaluating work and payment should be followed:



## 6.2 Subrecipient Implementation Responsibilities

All Subrecipients participating in CDBG-DR projects which are applicable to Davis-Bacon requirements will perform the following:

1. Subrecipients should designate staff whose responsibilities will be to review, enforce and provide feedback to direct contractors to make sure that the correct wage rate is used and submitted to PRDOH.

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<sup>18</sup> These interviews may use the official HUD-11 Form which can be accessed at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/11.pdf> and <https://www.hud.gov/sites/dfiles/OCHCO/documents/11SP.pdf> (Spanish version).

2. Subrecipients are responsible for submitting certified payrolls for any direct contracts which fall under a covered contract. Recipients are also responsible to ensure submission of certified payrolls.
3. Subrecipients are responsible for the direct oversight of their contractors and any respective laborers and mechanics.
4. Subrecipients should be proactively reviewing and performing Quality Assurance/Quality Control (**QA/QC**) to the reviews their teams perform to ensure compliance with the labor standard provisions.
5. Subrecipients are responsible for providing feedback and to ensure correction of underpayments.
6. Subrecipients should submit enforcement reports and provide training and technical assistance as needed.
7. Subrecipients should adhere to PRDOH recordkeeping requirements, as established in the Recordkeeping Policy and ensure full documentation is always available for any internal or external monitoring visit.

### **6.3 Contractor Implementation Responsibilities**

In order to ensure CDBG-DR programs and services are in compliance, contractors must implement the following activities:

1. Attend pre-construction kickoff conference with PRDOH to ensure training and familiarity with Davis-Bacon requirements and assuring the correct wage rates will be used upfront.
2. Contractors should be proactive in participating in trainings and requesting technical assistance prior and during construction.
3. Enforce requirements throughout the duration of the construction project.
4. Maintain adequate documentation from their records and of their subcontractors' records to show compliance with Davis-Bacon and Related Acts requirements. An initial list is provided below:
  - a. Maintain basic records that include key information for laborers and mechanics, such as name, address, and social security numbers.
  - b. Certified payroll reports that contain the required information, such as employee name, individually identifying 4-digit number, work classifications, hourly rates of pay including rates of contributions or costs anticipated for fringe benefits, daily and weekly number of hours worked including any overtime hours, gross earnings, deductions made, and actual net wages paid.
  - c. Evidence pertaining to any fringe benefit programs.
  - d. Maintain detailed information regarding apprentice/trainee programs, if applicable. Such evidence may include the approval of apprenticeship or

trainee program, the registration of each apprentice or trainee, and the applicable ratios and wage rates contained in the program.

5. Weekly reporting of payroll information with accompanied Statement of Compliance bearing original wet signatures.
6. Contractors are required to display the Davis-Bacon poster WD-1321<sup>19</sup> and relevant wage scale prominently and easily accessible at the work site.
7. Contractors should provide additional training to their staff as needed to ensure effective execution of duties for reviewing payroll.
8. Contractors and their recipients are required to adhere to record retention (payroll records and all supporting documentation) for five (5) years after the project completion date.

PRDOH additionally encourages all contractors to review the resources available from HUD's "Davis-Bacon Labor Standards – A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects" that will help understand Davis-Bacon laws and regulations.<sup>20</sup>

## **7 Davis-Bacon Wage Determination**

Davis-Bacon wages are "based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work" in a local area. 40 U.S.C. § 3142. These wage determinations are set by the U.S. DOL and are published online at <https://beta.sam.gov/help/wage-determinations>.

All covered contracts must include Davis-Bacon labor standards clauses and the applicable wage determinations depending on the type of construction as outlined in this section.

### **7.1 Categories of Work**

The DOL establishes Davis-Bacon wage decisions for four (4) broad categories of construction work:

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<sup>19</sup> Every employer performing work covered by the labor standards of The Davis-Bacon and related Acts shall post a notice (including any applicable wage determination) at the site of the work in a prominent and accessible place where it may be easily seen by employees. The official DOL poster can be accessed at: <https://www.dol.gov/whd/programs/dbra/wh1321.htm>

<sup>20</sup> HUD's Davis-Bacon Labor Standards – A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects: <https://files.hudexchange.info/resources/documents/Making-Davis-Bacon-Work-Contractors-Guide-Prevailing-Wage-Requirements.pdf>.



## **Residential**

Residential construction is defined as those projects involving the construction, alteration or repair of single-family houses or apartment buildings of no more than four (4) stories in height. The definition includes all incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

See Davis-Bacon Act WD # PR20200003 Residential,<sup>21</sup> published on January 03, 2020.

## **Building**

Building construction includes apartment buildings exceeding four (4) stories, and all other sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including incidental items such as grading, paving and utilities. Examples include high-rise apartment buildings, nursing homes and convalescent facilities, community centers, fire stations, commercial buildings, and dormitories. U.S. Department of Housing and Urban Development. February 2012. *Federal Labor Standards Requirements in Housing and Urban Development Programs*. HUD Handbook 1344.1 Rev2 Chapter 3, 3-2, 2/2012.<sup>22</sup>

See Davis-Bacon Act WD # PR20200001 Building,<sup>23</sup> published on January 03, 2020.

## **Highway**

Highway construction includes the initial construction, alteration or repair of roads, streets, highways, alleys, parking areas, sidewalks and other similar projects not incidental\* to residential, building or heavy construction.

For example, the repair of streets and parking areas in a residential area that is performed independent of any other construction work is subject to highway wage rates. However, streets, parking areas and sidewalks installed during the new construction of residential apartments would be considered incidental to the residential construction work and would be performed pursuant to the residential wage decision applicable to the project.

See Davis-Bacon Act WD # PR20200002 Highway,<sup>24</sup> published on January 03, 2020.

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<sup>21</sup> Davis-Bacon Wage Determination # PR20200003: <https://beta.sam.gov/wage-determination/PR20200003/0#document>

<sup>22</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, <https://www.hud.gov/sites/documents/13441C3SECH.PDF>.

<sup>23</sup> Davis-Bacon Wage Determination # PR20200001: <https://beta.sam.gov/wage-determination/PR20200001/0#document>.

<sup>24</sup> Davis-Bacon Wage Determination # PR20200002: <https://beta.sam.gov/wage-determination/PR20200002/0#document>.



## Heavy

Heavy construction projects are those that are not properly classified as “residential”, “building”, or “highway”. Some examples include antenna towers, canals, drainage and irrigation projects, sanitary and storm sewers, water mains and supply lines (not incidental to other construction), and storage tanks.

See Davis-Bacon Act WD # PR20200002 Heavy,<sup>25</sup> published on January 03, 2020.

The most recent available wage rate determinations and the corresponding links are provided in footnotes. Contractors are responsible for verifying the latest wage rates applicable for the project. HUD Handbook 1344.1 Rev2 Chapter 3, 3-3, 2/2012.<sup>26</sup>

## 7.2 General Wage Decisions and Project Wage Decisions

### General Wage Decisions

Most Davis-Bacon wage decisions are “General Wage Decisions”, also referred to as “area decisions”. General wage decisions<sup>27</sup> are usually published annually by the DOL and may be modified or superseded throughout the year. The DOL updates wage decisions and publishes them on Fridays. The official web site for publications of general wage decisions, modifications and supersedeas<sup>28</sup> wage decisions is: <https://beta.sam.gov/>.

HUD Labor Relations staff and Labor Compliance Administrators (**LCAs**) may utilize general wage decisions without advance notice or approval from DOL. Most Davis-Bacon wage decisions are available as published general wage decisions.

### Project wage decisions

If an appropriate wage decision (by location, character of work, and/or specific trade required) is not published in the general wage decisions, a “project” wage decision shall be ordered from DOL by PRDOH. Project wage decisions are applicable only to the construction work specified on the request to DOL and listed on the front page of the wage decision. Project wage decisions are valid for 180 days from the date of original issuance by DOL. The issuance and expiration dates will be indicated on the front page

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<sup>25</sup> Davis-Bacon Wage Determination # PR20200002: <https://beta.sam.gov/wage-determination/PR20200002/0#document>.

<sup>26</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, <https://www.hud.gov/sites/documents/13441C3SECH.PDF>

<sup>27</sup> General Wage Decisions also referred to as “area decisions”.

<sup>28</sup> Supersedeas - Latin for “you shall desist”; an order by an appeals court commanding a lower court not to enforce or proceed with a judgment or sentence pending the decision on the appeal or until further order of the appeals court.

of the wage decision. Like general wage decisions, project wage decisions may be modified.

Note: A project wage decision may be applicable even though a general wage determination is published which covers the geographic location and character of work involved.<sup>29</sup> HUD Handbook 1344.1 Rev2 Chapter 3 3-4 (B) 2/2012.<sup>30</sup>

Project wage decision must be ordered on a case-by-case basis from DOL. To request a Project wage decision, PRDOH will submit a completed DBRA Standard Form (SF)-308<sup>31</sup>, *Request for Determination and Response to Request*, to the DOL National Office, and will adhere to the approximately thirty (30) days for receipt of the project wage decision from the DOL.

### 7.3 Wage Decision Lock in Date

General and project wage decisions, whichever are applicable, become effective or “lock-in” for a particular contract or project at a specific point, in most cases, not later than the date construction starts.

Once a wage decision is “locked-in” for a specific contract or project, subsequent modifications or supersedeas wage decisions are not effective for that contract/project. However, prior to the “lock-in” date, modifications and supersedeas wage decisions shall be considered for effectiveness. Project wage decisions shall be monitored to ensure that the “lock-in” date occurs before the project wage decision expires. The “lock-in” date is also referred to as the “effective date”. Handbook 1344.1 Rev2 Chapter 3, 3-10, 2/2012.<sup>32</sup>

General and project wage decisions shall be effective (locked-in) on the date the contract is awarded, or the date construction starts, whichever may occur first, except as follows:

- Contracts entered into pursuant to competitive bidding – General wage decisions shall be locked-in on the date bids are opened provided that the contract is awarded within **ninety (90) days** after bid opening. If the contract is awarded more than **ninety (90) days** after bid opening, a general wage decision must be

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<sup>29</sup> As an example: A project involves only roof replacement on a four (4) story apartment building and the only classification needed for the work is a Roofer. A general wage decision is published for residential construction in the county where the project is located; however, the general wage decision does not include a Roofer classification and wage rate. In this case, the general wage decision is not relevant to the roof replacement and a project wage decision must be ordered from DOL.

<sup>30</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, <https://www.hud.gov/sites/documents/13441C3SECH.PDF>

<sup>31</sup> DOL available DBRA Forms and Posters can be accessed at: <https://www.dol.gov/whd/programs/dbra/forms.htm>; DOL "Request For Wage Determination And Response To Request", DBRA SF-308 can be accessed at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/sf308x.pdf>. Included as Appendix C.

<sup>32</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, <https://www.hud.gov/sites/documents/13441C3SECH.PDF>

updated as of the date of award unless an extension is obtained. A project wage decision shall be locked-in at contract award. Modifications to a general or project wage decision published at [www.beta.sam.gov](http://www.beta.sam.gov) or received by HUD prior to the lock-in date shall be effective with respect to the contract/project.

- Exception for competitive bid procedures ONLY – A modification to a general or project wage decision published/received less than **ten (10) days** before bid opening may be disregarded if it is found that there is not a reasonable amount of time to notify prospective bidders of the modification before bid opening. A record of such finding must be made to the contract/project file. Handbook 1344.1 Rev2 Chapter 3, 3-10(A), 2/2012.<sup>33</sup>

#### 7.4 Determining the minimum wage rate calculation

The minimum rate consists of the basic hourly rate for wages plus any fringe benefits paid. This does not include any mandated payments made for federal and state taxes, social security etc. The Basic Hourly Rate (**BHR**) is set by the actual classification of work – roofer, laborer, electrician, plumber etc. Workers can work under multiple classifications in one day in which the contractor must split the day into two (2) separate work classifications and pay according to the individual wage determinations for each classification.

Fringe Benefits are the payments made to a trustee or third (3<sup>rd</sup>) party fund, plan or program as a bona fide benefit to the employee. These can include benefits such as life insurance, health insurance, pension, vacation, holiday, sick leave, or other.

Davis-Bacon allows the fringe benefit to be a component of the prevailing wage determination, as long as the wages plus the fringe benefit are equal to or greater than the Davis-Bacon Wage Determination Rate. Ensuring this will allow a contractor to be compliant with Executive Order 2018-033.

Contractors have the option to pay the BHR and the Fringe Benefit rate in cash or they can pay the BHR directly to the employee and contribute payments to a Fringe Benefit plan.

Workers must submit an “Authorization for Deductions” form indicating they are aware of that the deductions are being made for payroll deductions permissible without application to or approval of the Secretary of Labor.

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<sup>33</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, <https://www.hud.gov/sites/documents/13441C3SECH.PDF>

## 7.5 Submission of Certified Payrolls

It is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. § 3.3, 5.5(a). The Copeland Act requires contractors and subcontractors performing work on federally financed or assisted construction contracts to furnish weekly a statement with respect to the wages paid each employee during the preceding week. 40 U.S.C. § 3145. DOL Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

PRDOH will establish a system for the collection of certified payroll information as described. The following list of information will be requested in a certified payroll submission for each employee working on a CDBG-DR project:

- Contractor or Subcontractor Information.
  - Name of company & address.
  - Payroll Number.
  - Week Ending date.
  - Project and Location.
  - Project or Contract Number.
- Name and Individual Identifying Number of each worker on each weekly payroll submitted.
- Number of Withholding Exemptions if needed.
- Work Classification(s) description of work actually performed by each laborer or mechanic (consult classification and minimum wage schedule set forth in contract specifications if needed).
  - If additional classifications are deemed necessary, PRDOH Davis-Bacon Wage Unit shall provide guidance.
  - If an individual may be shown as having worked in more than one classification, provide an accurate breakdown of hours worked in each classification as maintained and shown on the submitted payroll by use of separate entries.
- Hours worked should list the day and date and straight time and overtime hours worked as applicable.

- On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".<sup>34</sup>
  - Reflect the total amount of hours worked.
- The Rate of Pay (Including Fringe Benefits paid in cash): The straight time for each worker, listing the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic hourly rate.
- When overtime is worked, the overtime hourly rate paid plus any cash in lieu of fringe benefits paid should be shown for each worker. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under CWHSSA if the prime contract exceeds \$100,000.
- In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits.
- Gross Amount Earned for "This Project" should be listed which was earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on the payroll being submitted, it should be reflected in a separate area named "All Projects".
- All Deductions should be shown for gross amounts earned for "All Projects". All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R. Part 3. If an individual worked on other jobs in addition to the project, it should be shown in actual deductions from their weekly gross wage, and it should be indicated that deductions were based on their gross wages.
- Net Wages Paid for the week should be listed.
- All totals should be calculated correctly.
- The compliance statement bearing an original signature needs to be completed as it is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than **five (5) years**, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.
- Contractors should list all required fringe benefits. If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check affirm as well as on the payroll form to indicate the payment should be shown.

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<sup>34</sup> Act No. 4-2017, known as the "Labor Transformation and Flexibility Act", defines overtime as hours worked in excess of eight (8) per calendar day as well as the hours worked in excess of forty (40) during the workweek, hours worked during the period in which a business shall be closed to the public by law, the hours worked during the rest day, or as defined in a collective bargaining agreement.

- Contractors who pay no fringe benefits – If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, should pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. In as much as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate.
- Any Exceptions your project should be listed.
- Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits.
- All computation of overtime rates should also be reflected including for those contractors who do not pay a fringe.

## 8 Apprenticeships

Apprentices and trainees can be paid less than the wage rate posted in the corresponding Wage Determination as long they are registered in an approved apprenticeship or training program. Apprentices are generally paid a percentage of the WD, based on time spent in the program. Approved programs are those which have been registered with the DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency in Puerto Rico, as designated by the Puerto Rico Department of Labor and Human Resources (PRDOLHR).

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. 48 C.F.R. § 52.222-9(a)(2).

Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. 48 C.F.R. § 52.222-9(a)(3).

Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered

program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. 48 C.F.R. § 52.222-9(a)(4).

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. 48 C.F.R. § 52.222-9(a)(5).

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. 48 C.F.R. § 52.222-9(a)(6).

## **9 Exceptions to Coverage**

If any portion of a contract has Davis-Bacon applicability, all the work performed under the contract is subject to Davis-Bacon.

Davis-Bacon shall not apply to construction of a less than designated number of eight (8) housing units, as established in certain authorizing statutes. Some examples are included sections of the HCD, the Housing Act of 1937, and the Cranston-Gonzalez National Affordable Housing Act of 1990, 42 U.S.C. § 12701 *et seq.*

There are no exceptions to Davis-Bacon requirements for volunteer labor unless an exception is specifically provided for in the act under which the funds are derived from.

### **9.1 Sick Leave/Vacation Time**

Davis-Bacon does not require the contractors or subcontractors to give their employees time off for holidays, vacations, or sick leave (either with or without pay) unless otherwise indicated on the Wage determination set forth by the DOL. Any time off conceded to the employee (holiday, vacation or sick leave), even when paid, is not to be calculated as part of the total hours worked for the overtime purposes, as it is not considered time worked.

Unless set forth on the WD from the DOL, the DBA and CWHSSA do not require employers to give their employees time off for holidays, vacations, or sick leave - either with or without pay. If the contractor allows an employee time off for a holiday, a vacation, or because they are sick, the time off, even though the employee is paid for the time, is not



hours worked and need not be included in the total hours worked for overtime purposes. The gross wages are set forth on the certified payroll, as are deductions, but only the actual number of DBA hours worked are entered on the Certified Payroll Form. Often specific states may require pay for holidays, vacations, or sick leave and a contractor must comply with state requirements in addition to DBA requirements.

## 10 Davis-Bacon Workers' Rights

PRDOH requires all contractors and recipients to inform all workers of their right to know when their job is covered by Davis-Bacon rules. DOL requires every employer performing work covered by DBRA to post a notice (including any applicable wage determination) at the site of the work in a prominent and accessible place where it may be easily seen by employees (Davis-Bacon Employee Rights<sup>35</sup> and the Project Wage Sheet<sup>36</sup>). Signs must be posted by contractors where workers can see them so they can determine if they are being paid prevailing wage. These must be posted in English and Spanish<sup>37</sup> along with the name, address, and telephone number of the LCA or another responsible contractor officer. These are included as Appendix C.

### 10.1 Davis-Bacon Non-Compliance

In cases where PRDOH finds instances of repeated non-compliance, the following list of repercussions for this non-compliance, contemplated in the Davis-Bacon Act<sup>38</sup>, may be implemented or flagged for follow-up with local and/or federal entities:

- Payment to contractor will not be made until errors are corrected.
- Contract can be terminated for non-compliance.
- Debarment from all Government contracts for a period up to **three (3) years**.
- Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest.
- HUD sanctions denying participation in HUD programs or debarment from future HUD programs.
- May be subject to civil or criminal prosecution, False Claims Act of 1863 (**FCA**), as amended, 31 U.S.C. § 3729 *et seq.*

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<sup>35</sup> DOL provides the Davis-Bacon poster: <https://www.dol.gov/whd/programs/dbra/wh1321.htm>. Included as Appendix C.

<sup>36</sup> The Project Work Sheet: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4720.doc>. Included as Appendix C.

<sup>37</sup> For resources in Spanish on Davis-Bacon, access: <https://www.hudexchange.info/resource/2662/wh-1321-davis-bacon-poster-en-espanol/>; and <https://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>. Included as Appendix C.

<sup>38</sup> 40 U.S.C. § 3143, 3144.



## 10.2 Davis-Bacon Complaints

The Reorganization Plan Number 14 of 1950, whose purpose was to coordinate the administration of labor standards under various statutes relating to federal construction or federally financed assistance, reiterated that the actual performance of enforcement activities, which included the investigation of complaints violations, remained the duty of the respective agencies awarding the contracts or providing the federal assistance.<sup>39</sup> Handbook 1344.1 Rev 2, includes as part of the Local Contracting Agency (**LCA**) the receipt of complaints and/or allegations of violations and the full correction of labor standards deficiencies or violations.<sup>40</sup>

Employees of any contractor or subrecipient can reach out to the PRDOH for resolution related to issues of wages with their contractor or subrecipient and/or submit a DBRA Complaint via:

<b>Email:</b>	<a href="mailto:davisbacon@vivienda.pr.gov">davisbacon@vivienda.pr.gov</a>
<b>Postal Address:</b>	Puerto Rico CDBG-DR Program Attn: Federal Compliance and Labor Standards Division P.O. Box 21365 San Juan, PR 00928-1365
<b>Customer Service Call Center Phone Number</b>	<a href="tel:(787)274-2527">(787) 274-2527 (TTY: 787-522-5950)</a> 1-833-234-CDBG / 1-833-234-2324 Toll Free (English and Spanish) <b>Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.</b>

PRDOH Davis-Bacon complaints shall be in writing and must contain the following information:

- Full Name;
- Address and phone number;
- Name of the company where the Complainant works/worked;
- Location of the company (this may be different from where the Complainant's place of work);
- Phone number of the company;
- Manager's or owner's name (the person to ask to speak to);
- Type of work the Complainant did;
- How and when the Complainant was paid (for example, by check every Friday); and

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<sup>39</sup> U.S. Department of Housing and Urban Development, (February 2012), *Federal Labor Standards Requirements in Housing and Urban Development Programs*, Handbook 1344.1 Rev. 2, <https://www.hud.gov/sites/documents/13441C1SECH.PDF>.

<sup>40</sup> Id., <https://www.hud.gov/sites/documents/13441C5SECH.PDF>.

- Any additional information that the Complainant can provide, such as copies of pay stubs, personal records of hours worked, or details about the employer's pay practices, may also be helpful.

Alternatively, complaints made by contractor or subcontractor employees can be directly referred to the DOL's Wage and Hour Division (**WHD**), who is responsible for administering and enforcing worker protection laws. Complaints submitted to WHD may be drafted in English or in Spanish.<sup>41</sup> PRDOH and WHD are committed to ensuring that workers in Puerto Rico are paid properly and for all the hours they work, regardless of immigration status.

WHD Davis-Bacon complaints must contain, at minimum, the following information:

- Full Name;
- Address and phone number;
- Name of the company where the Complainant works/worked;
- Location of the company (this may be different from where the Complainant's place of work);
- Phone number of the company;
- Manager's or owner's name (the person to ask to speak to);
- Type of work the Complainant did;
- How and when the Complainant was paid (for example, by check every Friday); and
- Any additional information that the Complainant can provide, such as copies of pay stubs, personal records of hours worked, or details about the employer's pay practices, may also be helpful.

For more information on how to file a complaint directly to the WHD, access: <https://www.dol.gov/agencies/whd/contact/complaints>. The complaints process and frequently asked questions are also available in Spanish at: [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD1498HowToFileAComplaint\\_Spanish.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD1498HowToFileAComplaint_Spanish.pdf); and <https://www.dol.gov/agencies/whd/espanol/preguntas>.

Additionally, questions or concerns, can be directed to 1-866-487-9243 or visit [www.dol.gov/whd](http://www.dol.gov/whd), where you will be directed to the nearest WHD office for assistance.

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<sup>41</sup> For information on how to file a complaint, access: <https://www.dol.gov/agencies/whd/contact/complaints>. For the Spanish resource information, access: [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD1498HowToFileAComplaint\\_Spanish.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WHD1498HowToFileAComplaint_Spanish.pdf); and <https://www.dol.gov/agencies/whd/espanol/preguntas>. Included as Appendix C.

All WHD services are free and confidential, whether the Complainant is documented or not. Employers cannot terminate employees or in any other manner discriminate against them for filing a complaint with WHD.

Workers may also submit a complaint or inquiry to the DOL Puerto Rico Caribbean District Office at the contact information below:

U.S. Department of Labor Wage and Hour Division  
T-Mobile Center  
B-7 Tabonuco St  
Suite 1104  
Guaynabo, PR 00968

Phone: 787-775-1947; 1-866-4-USWAGE; (1-866-487-9243)

District Director: José R. Vázquez

### 10.3 Davis-Bacon Appeal Process

In the event a wage determination or ruling made by PRDOH regarding the application of a wage determination for a specific project shall arise, the employer may appeal the decision directly with PRDOH. An appeal must be submitted in writing to the CDBG-DR Legal Division no later than **thirty (30) calendar days** following the denial of a requested accommodation or modification. Individuals who wish to submit an appeal after receiving a final determination of the accommodation request, may do so through any of the following means:

- **E-mail:** [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov)
- **Postal mail:** Puerto Rico CDBG-DR Program  
Attn: CDBG-DR Legal Division  
P.O. Box 21365  
San Juan, PR 00928-1365

A determination will be provided to the requestor in writing within **thirty (30) business days** of receiving the appeal a final determination of the accommodation request.

An individual's receipt or denial of an accommodation does not prevent the individual from making another request at a later time if circumstances change and they believe that an accommodation is needed due to limitations from a disability (e.g., the disability worsens or they require an additional or different reasonable accommodation).

The employer should present its request in writing accompanied by supporting data of other information to PRDOH for referral to the WHD. PRDOH will reach out to the WHD<sup>42</sup> for further guidance and a response.

Until further guidance or response is provided, the employer will continue to use the existing wage rate but will be required to make all modifications once a final ruling is provided by WHD and complete adjustments thereafter.

## 11 Project Closeout

Once a project is completed and the contractor has flagged that it has submitted its last certified payroll, the PRDOH Davis-Bacon Unit will complete a closeout checklist to ensure all project documentation needed is on file and provide notification of compliance or request for additional information within **thirty (30) days** from receipt of notice in order to be able to close out the file. Non-compliance on final documentation will be referred to the PRDOH monitoring team for follow-up.

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<sup>42</sup> For contact information for the WHD, access: <https://www.dol.gov/agencies/whd/contact>.

## 12 Appendix

### 12.1 Appendix A Federal Labor Standards Provisions

The Following document is Form HUD-4010 (6/2009) from HUD's Handbook No: 1344.1 REV-2, <https://www.hud.gov/sites/documents/4010.PDF>

#### Applicability

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

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

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

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

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate 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 thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account

asset for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 C.F.R. 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 C.F.R. 5.5(a)(3)(i), and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.



**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee 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. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

#### **4. Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of

the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 C.F.R. Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 C.F.R. Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 C.F.R. Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 C.F.R. Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or

instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

***Remainder of page left blank intentionally.***

## 12.2 Appendix B

Labor Standards - Davis-Bacon and Related Acts Clauses to include in construction contracts. (From HUD form 5370 and 4710).

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

### A. Minimum Wages.

**(1)** All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained such laborers and mechanics. Contributions in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**(2) (i)** Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all 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; and (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.

**(ii)** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

**(iii)** In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise HUD or its designee or will notify HUD or its designee within the thirty (30)-day period that additional time is necessary.

**(iv)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

**(3)** Whenever the minimum wage rate 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 thereof.

**(4)** If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

**(b) Withholding of funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-

Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, 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. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

**(c) Payrolls and basic records.**

**(1)** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 C.F.R. 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**(2) (i)** The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.



(Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

**(ii)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete; (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. Part 3; and (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(iii)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

**(iv)** The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code. (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

**(d) (1) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the

job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(2) Trainees.** Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(3) Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

**(e) Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are hereby incorporated by reference in this contract.

**(f) Contract termination; debarment.** A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

**(g) Compliance with Davis-Bacon and related Act requirements.** All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(h) Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes' clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

**(i) Certification of eligibility.**

**(1)** By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

**(2)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

**(3)** The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**(j) Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.

**(k) Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

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## 12.3 Appendix C

The Davis-Bacon poster can be located at the DOL website at:  
<https://www.dol.gov/whd/programs/dbra/wh1321.htm>.<sup>43</sup>

### EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

#### FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

**PREVAILING WAGES** You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

**OVERTIME** You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

**ENFORCEMENT** Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who violates certified prevailing-wage or includes wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

**APPRENTICES** Apprenticeship rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

**PROPER PAY** If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

1-866-487-6243  
 TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)

### DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

#### PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

**SALARIOS PREVALENTES** No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

**SOBRETIEPO** Se le ha de pagar no menos de tiempo y medio (1 1/2) de la tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

**CUMPLIMIENTO** Se pueden retener pagos por contratos para asegurar que los obreros reciban los salarios y el pago de sobretiempos debidos, y se podrá aplicar daños y perjuicios si no se cumple con los requisitos del pago de sobretiempos. Las cláusulas contractuales de Davis-Bacon permiten la terminación y devaluación de contratos para afectar futuros contratos federales hasta tres años. El contrato que fallaba los requisitos certificados de las normas de pago de salarios prevalecientes de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

**APRENDICES** Las tasas de aprendizajes sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

**PAGO APROPIADO** Si Ud. no recibe el pago apropiado, o necesita de información adicional, póngase en contacto con el Contratista Oficial que aparece abajo:

o póngase en contacto con la División de Horas y Salarios del Departamento de Trabajo de los EE.UU.

1-866-487-6243  
 TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)

### EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

#### FEDERAL MINIMUM WAGE

# \$7.25 PER HOUR

**BEGINNING JULY 24, 2009**

The law requires employers to display this poster where employees can easily see it.

**OVERTIME PAY** At least 1 1/2 times the regular rate of pay for all hours worked over 40 in a workweek.

**CHILD LABOR** An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain hours restrictions. Different rules apply in agriculture employment.

**TIP CREDIT** Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employees must pay tipped employees a cash wage of at least \$2.13 per hour if they claim to credit against their minimum wage obligation. If an employer's tip combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

**NURSING MOTHERS** The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

**ENFORCEMENT** The Department has authority to recover back wages and an actual amount of liquidated damages in instances of minimum wage, overtime, and child labor violations. The Department may impose and recommend criminal prosecution. Employers may be assessed civil money penalties for each workday or separate violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA child labor provisions. Negligent civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violation is determined to be willful or repeated. The law also prohibits retaining, agreeing or outsourcing workers into the company or participating in any proceeding under the FLSA.

**ADDITIONAL INFORMATION**

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employees incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two, because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay provisions and certain classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

1-866-487-6243  
 TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)

### DERECHOS DE LOS TRABAJADORES BAJO LA LEY DE NORMAS JUSTAS DE TRABAJO (FLSA) (Ley de Reglas)

#### SALARIO MÍNIMO FEDERAL

# \$7.25 POR HORA

**A PARTIR DEL 24 DE JULIO DE 2009**

La ley exige que los empleadores exhiban este cartel donde sea visible por los empleados.

**PAGO POR SOBRETIEPO** Por lo menos tiempo y medio (1 1/2) de la tasa regular de pago por todas las horas trabajadas en exceso de 40 en una semana laboral.

**TRABAJO DE MENORES DE EDAD** El empleado debe tener por lo menos 16 años para trabajar en la mayoría de los trabajos no agrícolas y por lo menos 18 años para trabajar en los trabajos no agrícolas declarados peligrosos por el Secretario de Trabajo. Los menores de 14 y 15 años pueden trabajar fuera del horario escolar en varias ocupaciones que no son de manufactura, minería o extracción de petróleo. Existen reglas diferentes en agricultura. Se aplican diferentes reglamentos en empleo agrícola.

**CREDITO POR PROPINAS** Las empleadoras de "empleados que reciben propinas" que cumplen con ciertas condiciones, pueden reclamar un crédito de salario parcial basado en las propinas recibidas por sus empleados. Los empleados les tienen que pagar a los empleados que reciben propinas un salario en efectivo de por lo menos \$2.13 por hora si ellos reclaman un crédito de propinas contra su obligación de pagar el salario mínimo. Si el propina recibida por el empleado combinada con el salario en efectivo de por lo menos \$2.13 por hora del empleador no equivale al salario mínimo por hora, el empleador tiene que compensar la diferencia.

**MADRES LACTANTES** La FLSA exige que los empleadores le proporcionen un tiempo de descanso razonable a la empleada que está lactando y que está sujeta a los requisitos de sobretiempos de la FLSA, para que la empleada se detenga lo suficiente para su lactancia por un año después del nacimiento del niño, cada vez que dicha empleada tenga la necesidad de expresar leche. A los empleadores también se les exige que proporcionen un lugar, que no sea un baño, protegido de la vista de los demás y libre de interrupción de los compañeros de trabajo y del público, el cual pueda ser utilizado por la empleada para extraerse leche.

**CUMPLIMIENTO** El Departamento tiene la autoridad de recuperar salarios retroactivos y una cantidad igual en daños y perjuicios en casos de incumplimientos con el salario mínimo, sobretiempos y otros incumplimientos. El Departamento puede recomendar un encierro preventivo a la empleadora que no cumple. El Departamento puede imponer sanciones penales por cada incumplimiento. El Departamento puede imponer sanciones penales civiles por incumplimientos con las disposiciones de la FLSA sobre el trabajo de menores de edad. Además, se pueden imponer sanciones penales civiles o multas por cada incumplimiento. El incumplimiento de menores que resulta en la muerte o una lesión seria de un empleado menor de edad, y tiene consecuencias penales adicionales cuando se determina que el incumplimiento fue intencional o repetido. La ley también prohíbe tener represalias o despedir a los trabajadores que presentan una queja o que participan en cualquier proceso bajo FLSA.

**INFORMACION ADICIONAL**

- Ciertas ocupaciones y ciertos establecimientos están exentos de las disposiciones del salario mínimo, y/o de las disposiciones del pago de sobretiempos.
- Se aplican disposiciones especiales a trabajadores de Samoa Americana, del Estado Libre Asociado de las Islas Marianas del Norte y del Estado Libre Asociado de Puerto Rico.
- Algunas leyes estatales proporcionan protecciones más amplias a los trabajadores; los empleadores tienen que cumplir con ambas.
- Algunos empleadores clasifican incorrectamente a sus trabajadores como "contratistas independientes" cuando en realidad son empleados según la FLSA. Es importante conocer la diferencia entre los dos porque los empleados (a menos que estén exentos) tienen derecho a las protecciones del salario mínimo y del pago de sobretiempos bajo la FLSA y los contratistas independientes no lo tienen.
- Ciertos estudiantes a tiempo completo, aprendices estudiantiles, trabajadores con discapacidades les es posible pagar menos que el salario mínimo bajo ciertas condiciones especiales emitidas por el Departamento de Trabajo.

1-866-487-6243  
 TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)

<sup>43</sup> These documents are available in Spanish for Davis-Bacon at the following websites:  
<https://www.hudexchange.info/resource/2662/wh-1321-davis-bacon-poster-en-espanol/>;  
<https://www.dol.gov/whd/regs/compliance/posters/davispan.pdf> and

The Project Work Sheet can be located here:  
<https://www.hud.gov/sites/dfiles/OCHCO/documents/4720.doc>.

Project Wage Rate Sheet			U.S. Department of Housing and Urban Development Office of Davis-Bacon and Labor Standards			
PROJECT NAME:			WAGE DECISION NUMBER/MODIFICATION NUMBER:			
PROJECT NUMBER:			PROJECT COUNTY:			
WORK CLASSIFICATION	BASIC HOURLY RATE (BHR)	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	LABORERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Bricklayers			\$			\$
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	OPERATORS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Plumbers			\$			\$
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Layers			\$			\$
Tapers			\$			\$
Tile Setters			\$	TRUCK DRIVERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
OTHER CLASSIFICATIONS						\$
			\$			\$
			\$			\$
			\$			\$
ADDITIONAL CLASSIFICATIONS (HUD Form 4230-A)						
WORK CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	DATE OF HUD SUBMISSION TO DOL	DATE OF DOL APPROVAL	
			\$			
			\$			
			\$			
			\$			

form HUD-4720  
(05/2019)

**END OF GUIDELINES.**