

Chapter 6 – Labor Standards

Basic Federal Requirement

All laborers and mechanics employed by the contractors and subcontractors in the performance of construction work financed in whole or in part with Community Development Block Grant assistance shall be paid wages at rates no 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. This section shall apply to the rehabilitation of residential property only if such property contains not less than 8 (eight) units. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in federal law. The requirement sources are Section 110 of the federal Housing and Community Development Act and 29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

This requirement shall not apply to:

1. Any individual that performs services for which the individual volunteered;
2. (a) Does not receive compensation for such services; or
(b) Is only paid expenses, reasonable benefits, or a nominal fee for such services; and
3. Is not otherwise employed at any time in the construction work.

Davis Bacon Act:

Communities implementing projects, which involve construction contracts in excess of \$2,000 (except rehabilitation of residential property designed for use by less than eight families), must comply with federal labor laws. The \$2,000 threshold does not mean that a contract must involve \$2,000 or more of CDBG funds to be subject to federal labor laws. The contract could be funded with any source of funds but be part of a project assisted in whole or in part with CDBG funds. A good web site for basic information and forms is:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement

The following requirements apply:

All laborers and mechanics employed by contractors or subcontractors on the project shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the US Secretary of Labor; regardless of contractual relationship. The principle requirement of the Act are:

- Recipients must include a copy of the prevailing wage rate determination and the federal labor standards provisions (HUD 4010) in the Invitation to Bid. Wage Determinations may be downloaded at <http://www.wdol.gov/>.
- Recipients may only award construction contracts to eligible contractors/subcontractors. These

contractors must agree to comply with the labor standards provisions.

- Contractors must pay laborers the wage rate determined by the Secretary of Labor.
- Contractors must pay wages at least once a week.

Recipients are required to report all suspected, reported or confirmed violations to OBDD, which may investigate these alleged violations.

This requirement shall not apply to:

- Any individual that performs services for which the individual volunteered;
- (a) Does not receive compensation for such services; or
(b) Is only paid expenses, reasonable benefits, or a nominal fee for such services; and
- Is not otherwise employed at any time in the construction work.

Section 110(a) of the Housing and Community Development Act of 1974, as amended (Title I):

All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid 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. This section applies to the rehabilitation of residential property only if such property is designed for residential use for eight or more families.

Contract Work Hours and Safety Standards Act (CWHSSA):

For all construction projects in excess of \$100,000 the wages for every mechanic and laborer employed on the job shall be computed on the basis of a standard workweek of forty (40) hours. Employees shall be compensated at a rate of not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of forty hours in the work week (the required Davis Bacon base rate (no exceptions) x 1.5 + fringe benefits + zone pay = overtime rate).

Liquidated damages for failure to pay overtime will be computed in the sum of \$10 for each calendar day on which an employee was required or permitted to work in excess of the standard work week of forty hours without payment of overtime wages, without reference to work in excess of eight hours per day.

No person employed on the job site shall be required to work in surroundings or any other working conditions that are unsanitary, hazardous or dangerous to the health and safety of an employee as determined by the Construction Safety and Health standards promulgated by the Secretary of the United States Department of Labor.

More information about the Contract Work Hours and Safety Standards Act may be found at

<https://www.dol.gov/whd/govcontracts/cwhssa.htm>.

Copeland Act (Anti-Kickback Law):

The Copeland Act or Anti-Kickback Law states; "Whoever by force, intimidation, or threat of procuring dismissal from employment or by any other manner whatsoever, induces 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 he/she is entitled under their contract of employment, shall be fined or imprisoned or both."

This act provides that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account except voluntary and written authorization from employee for "permissible" salary deductions, the full amounts due at time of payments computed at wages not less than those contained in the Wage Determination issued by the Secretary of Labor. Appropriate weekly compliance statements and payrolls are required to be submitted.

Recipients are required to conduct interviews with employees to assure compliance with the terms of this law, and the contractor is required to maintain payroll records and to submit certified weekly payrolls to the recipient. More details of the Copeland Act

may be found at

<https://www.dol.gov/whd/govcontracts/copeland.htm>.

Definitions

Demolition – Stand-alone demolition projects (slum and blight clearance) without a related construction project are not necessarily subject to the federal labor standards requirements. However, if subsequent construction at the site is planned as part of the same contract or if subsequent construction is contemplated as part of a future construction project, then the demolition work is considered to be part of the overall construction project. In such cases, if the subsequent construction work is subject to Davis-Bacon requirements, then the demotion would likewise be covered by Davis-Bacon requirements. Refer to Labor Relations Letter LR 2009-01 dated August 12, 2009 for further information:

<http://www.hud.gov/offices/adm/hudclips/letters/09-1lr.pdf>

Drilling – Exploratory drilling is not covered by the federal labor standards requirements. However, drilling of wells for water or oil is covered by the federal labor standards requirements.

Equipment Installation – In very rare instances, for very small prime construction contracts for just the purchase of installation of a single piece of equipment, if the cost of the installation of the equipment does not exceed 13% of the purchase price of the equipment, generally Davis-Bacon does not apply. Be careful though, as the purchase of most equipment will trigger Davis-Bacon, such

as the purchase of an elevator and then installing.

Force Account – Work conducted by the grant recipient’s employees is generally exempt from the federal prevailing wage requirements. Please contact the Department’s Regional Coordinator for assistance if force account work is anticipated for pre-approval from OBDD and HUD if necessary.

Investigation – Non-routine examinations resulting from credible allegations of serious violations.

Overtime Pay – There are no exceptions to this rule. Overtime pay equals the federally required base rate of pay x 1.5 + fringe benefits + zone pay.

Piece Rate Work – Lump sum construction contracts. These contracts are usually found in sub-contractors, especially owner/operator contracts. To determine compliance divide the total hours worked by the contract price to determine the hourly rate of pay.

Site of Work – The physical place or places where the construction remains after work has been completed. This includes adjacent or nearby property used by the contractor that is reasonable to include in the ‘site’. This also includes property dedicated to and located in close proximity to the actual construction location: including fabrication plants; mobile factories; batch plants; borrow pits; headquarters; tool yards, etc. Properties not included are permanent offices, plants, pits, yards, etc of a commercial supplier or material supplier.

Truck Drivers – Truck drivers of a contractor or subcontractor are covered by Davis Bacon when: performing work on the “site of work” or transporting materials and/or supplies between the construction site and a facility deemed to be part of the “site of work”. Truck drivers are not covered when the driver of a contractor or subcontractor is hauling materials to or from a Davis Bacon job from a commercial supply facility when they are off the “site of work”.

Work Week –

- The federal workweek is a seven-day period. Overtime pay must be paid for hours worked in excess of 40 hours per week.
- The State (BOLI) workweek is a five-day period unless the schedule of work is for 10-hour days. For a five-day workweek overtime must be paid for all hours worked in excess of 8 hours per day. For a four-day workweek, overtime must be paid for all hours worked in excess of 10 hours per day. Regardless if 40 hours have been work in the week, the state requires overtime to be paid for all work on Saturday, Sunday and six legal holidays.

Enforcement Personnel

The grant recipient is responsible for compliance with all federal labor standards provisions. The recipient must designate an appropriate staff person to act as enforcement personnel to ensure compliance with all requirements and to be the primary contact with the state.

Recipient Responsibilities

Construction projects funded in whole or in part with CDBG funds, with construction projects of \$2,000 or more are responsible for compliance with all federal labor standards provisions included in HUD 4010, attached as **Exhibit 6A**. It is also available online at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12586.pdf Minimum requirements that must be met include:

- Designating an individual who is responsible for compliance;
- Applying Davis-Bacon requirements properly;
- Ensuring that the required labor standards provisions and federal Davis-Bacon Wage rates (and PWR) are included in all construction contracts;
- Verifying the applicable Wage Determination **ten** days before bid opening;
- Verifying eligibility of the general contractor before awarding the construction contract;
- Ensuring the Davis Bacon Wage Modification - Wage Determination and wage and hour poster are properly posted on the job-site;
- Informing, advising and supporting contractor compliance;
- Monitoring for violations;
- Investigating probable violations and complaints of underpayment;
- Requiring certified payroll reports to be submitted by contractors and reviewing them for compliance; and
- Enforcing the labor standards provisions in cases of non-compliance.

This area of project management is very important because failure to comply and/or

*inattention to details can result in failure to comply with the federal requirements. **Failing to comply can and does result in recipients having to pay for mistakes with their own funds.***

Note: ORS 279.855(4) requires that when a public works project is subject to the Davis-Bacon Act., if the public agency fails to include the state and federal prevailing rates of wage in the specification of contract or fails to include in the specifications informing which prevailing rate of wage is higher, the public agency will be liable to each affected worker for any unpaid difference between the applicable higher rate of wage and the lower rate of wage. The public agency will also be liable for an additional amount equal to the amount unpaid wages as liquidated damages.

Prime Contractor Responsibilities

The Prime contractor (also referred to as the *general* or *principal* contractor) is ultimately responsible as well as liable for the full compliance of all employers with the labor standard provisions applicable to the project. HUD's Labor Relations Desk Guide (PR01.DG) entitled "*DAVIS-BACON LABOR STANDARDS A Contractors Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*" can be located at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/4812LR

The responsibility for full compliance includes the contractor, subcontractors and any lower-tier subcontractors. Because of the contractual relationship between a prime contractor and the subcontractors, communication between the grant

administrator and any subcontractors should generally be done through the prime contractor.

- The prime contractor must collect from all sub-contractors the completed contractor/subcontractor agreement form, **Exhibits 6G Parts A-E**.
- **The prime and all sub-contractors must pay their workers weekly and submit the weekly-certified payroll reports, with the completed statement of compliance, to the recipient within 7-10 days of the weekly wage payment.**
- The prime contractor must post the required labor poster (i.e. Notice to Employees), with the contact box filled in with the name of a contact person, preferably a representative of the grant recipient, or HUD's website, an English and Spanish version is included as **Exhibit 6R**.
- The prime contractor must post the entire wage determination applicable to the project.
- The prime contractor must ensure that any necessary "Requests for Additional Wage Classifications" are completed and sent to the recipient and OBDD.
- The prime contractor is ***required*** to review the sub-contractors payrolls for compliance with the federal requirements.
- Allow representatives of the grant recipient to conduct employee interviews.
- The prime contractor must distribute, collect and submit any other documentation as needed/required to the recipient.

Wage Determination

Selecting the Proper Wage Determination

To assist in determining which wage rate applies to the project, the grant recipient can refer to

<https://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf> and

<http://www.wdol.gov/dba.aspx>. The projects typically funded by the program fit into either the building or heavy wage determinations. However, a project can be subject to multiple determinations. For example, if a large water system project involves a new treatment plant building and the construction of that building is more than 20% of the project cost, both the building and heavy rate will apply, as long as the non-building component is over 20% of the project cost, and both determinations must be included in the contract specifications. This is explained further in the US Department of Labor and Industries (DOL) memos. Please contact your Regional Coordinator for assistance in ensuring the proper wage rates are selected and used for the project. While the State BOLI PWR booklets are published twice a year. Davis-Bacon rates are subject to modification at any time. Recipients must verify that the federal rates have not been amended before relying on the rates contained in this publication. The Regional Coordinator will notify the recipient of the correct Wage Determination to be used. (See "Lock-In Date" below.)

Generally speaking, three (3) copies of the applicable Wage Determination will be used on each project. The first copy goes in the bid or contract specifications to let the contractor know the wage rates that must be observed on the job and to obligate the contractor to

comply. The second copy is posted on the job site so the laborers and mechanics know what wage rate is assigned to their classification. A third copy is used by the grant administrator to monitor contractor compliance.

“Lock-In” Date

Wage Determinations are modified by the U.S. Department of Labor as necessary to reflect changes in the construction industry. It is very important to be sure the most recent Wage Determination is being used and that all modifications to that decision are included in the bid documents.

It is the responsibility of the recipient to request the current federal wage determination from the OBDD regional coordinator ten days before bid opening for any applicable modifications. The Regional Coordinator will then give the recipient the correct federal Wage Determination to be used. The wage rates in effect **ten calendar days** before bid opening are **“locked in”**. This Wage Determination will apply to all work covered by the construction contract to be awarded under that bid advertisement.

Exception to “Lock-In” Date

An exception to the “lock-in” date described above applies when the construction contract award is delayed 90 days or more after the bid opening. In these cases, changes in the Wage Determination published between the bid opening and construction contract award date must be included in the construction contract. If this situation occurs, keep your Regional Coordinator informed so that you are sure to have the most recently published rates available.

Use of Oregon Prevailing Wage

The State prevailing wage rates (PWR) apply to all construction projects of \$50,000 or more including those that are federally funded. The Oregon PWR apply to public works projects subject to ORS 279C.800 and Davis-Bacon Act (40 U.S.C. 276a). For each specific job classification:

1. If the State PWR is higher than the federal prevailing wage rate, the contractor and every subcontractor on the project shall pay at least the State PWR (as required by ORS 279C.800 and 279C.870) and;
2. If the federal Davis-Bacon wage rate is higher than the state PWR the prime and every sub-contractor on the project shall pay at least the federal PWR of wage as required by Davis-Bacon

Both Davis-Bacon and the PWR rates must be included in the construction contracts funded, in whole or in part, with CDBG funds.

Additional Wage Classifications

If the Wage Determination does not include all the categories of workers needed for the project, a request for an additional classification must be made through the Regional Coordinator after the construction contract is awarded. Additional wage classification requests can only be submitted after the construction contract has been awarded by the grant recipient. The prime contractor, and subcontractor, if applicable, must submit the *Request for Authorization of Additional Classification and Rate* form. The HUD 4230a form and instructions are included as **Exhibit 6B** and can be downloaded for

completion at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud4

In order to be considered, the proposed rate must be no less than the lowest wage for craftsman, laborer or power equipment operators for the trade group requested. Once the state receives a completed request, it is forwarded to the U.S. Department of Labor (DOL) for review. It can take up to 45 days to receive a response from the DOL. Until a response is received, recipients should ensure that any employees working the trade classifications being requested are paid no less than the amount identified on the request form. If the DOL approves the additional classification, the prime contractor must post the approval notice on the job site with the Wage Determination.

Note: BOLI also requires additional classification and rate determination for occupations and trades not listed within the state prevailing wage rates. Contact BOLI about this process.

CONTRACTOR CLEARANCE

Construction Contractors Board (CCB)

All persons working on CDBG-funded construction projects must be registered with the Oregon Construction Contractors Board (CCB) or be the employee of a contractor or subcontractor that is registered. Recipients must have evidence that all persons on the job as “subcontractors” are in fact “independent contractors” registered with the Construction Contractors Board. Registrations may be

checked at the website

<http://www.oregon.gov/ccb/Pages/index.aspx>.

Oregon’s Construction Contractors Registration Act, ORS Chapter 701, requires that all persons engaged for compensation in any construction activity involving improvements to real estate must be registered with the Oregon Construction Contractors Board. This includes partnerships, corporations and self-employed individuals, whether working by the hour, week, job or “cost plus” and whether by written contract or oral agreement.

Registration is required for any individual or business entity which advertises, offers, bids, or arranges to do, or actually does, any construction, alteration, remodeling, or repair involving residential, commercial, industrial or public works improvements. Violations can result in civil penalties, imposed by the Construction Contractors Board.

Anyone can call the Construction Contractors Board to verify the registration of a contractor. More information is available by calling (503) 378-4621 or at

<http://www.oregon.gov/ccb/Pages/index.aspx>

Parties Excluded from Federal Procurement (SAM)

Federal regulations require verification of general (prime) contractor eligibility. To be “eligible” a contractor must not be listed on the *List of Parties Excluded from Federal Procurement and Non-procurement Programs* published by the General Services Administration. The list was previously referred to as the “Excluded Parties List” or EPLS. Effective 2012, the list has moved to the

System Award Management (SAM) website. Recipients must call their Regional Coordinator at the department to clear the general contractor before awarding the construction contract. The Regional Coordinator will check the SAM web site and document it in the project file. Recipients can search the List themselves by using the following Internet address: www.sam.gov

In the State level, BOLI also maintains a List of Contractors Ineligible to Receive Public Works Contracts which is available at http://www.oregon.gov/BOLI/WHD/PWR/docs/Debar_List.pdf

Independent Contractors

Independent contractors registered as “exempt” (those with no employees of their own) are not considered subcontractors on a job covered by the federal Davis-Bacon Act and the U.S. Department of Housing and Urban Development regulations. Those individuals, who may be referred to as “owner operators,” cannot certify their own wages and must be shown on:

- The payroll reports for their general contractor; or
- The payroll reports for another subcontractor that is not exempt; or
- The “owner operator” can complete their own payroll report and the general or non-exempt subcontractor can co-sign the report.

More information is contained in the Labor Relations Letter attached as **Exhibit 6C** and

online at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olr_9601 .

Responsible Bidder Forms

Beginning January 1, 2006, Oregon state law requires that all public entities awarding public improvement contracts to the lowest responsible bidder complete and submit a Responsible Bidder Determination form to the CCB within 30 days of the award. The CCB has developed a web-based entry system that includes this form and other information. The Public Contracts Responsible Bidder Determination (PCRBD) web site is at https://ccbed.ccb.state.or.us/ccb_frames/responsible_bidders/.

Public Works Bond

all independent contractors working on public works projects in Oregon must obtain and file with the CCB, a Public Works Bond in the amount of \$30,000. This bond is for the exclusive purpose of paying wage claims and must be filed before starting work on a contract or subcontract for a public works project. It must be obtained from a corporate surety authorized to do business in Oregon. A form is attached as **Exhibit 6D** and is on the web at <http://www.oregon.gov/CCB/public-contracting/Pages/public-works-bond.aspx> .

The provision requiring the Public Works Bond must be contained in the construction contract and in every subcontract. The general contractor is required to verify that the subcontractors have filed a Public Works Bond before permitting a subcontractor to start work on a project. Recipients should verify that the

contractor and subcontractors have filed the Public Works Bond.

Certified disadvantaged, minority, women or emerging small business may elect to be exempt during the first year of certification from the Office of Minority, Women and Emerging Small Business (OMWESB). To find out more about the OMWESB program, go to <http://www.oregon4biz.com/How-We-Can-Help/COBID/> . If a business elects to utilize the OMWESB exemption for the Public Works Bond, the firm must submit the application form to the CCB. The request may be downloaded from https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/PWB_Application_Exemption.pdf.

Twenty-Five percent (25%) retainage

Under Oregon Law, the recipient must retain twenty-five percent (25%) of any amount owed to a contractor if the contractor has not submitted the required Certified Payroll Reports (CPR). The recipient will pay the contractor within 14 days after the proper CPR is submitted. Likewise, the prime contractor must retain 25% of any amount owed to a first-tier subcontractor until the subcontractor has submitted the required CPR.

Pre-Construction Conference Requirements

There is no longer a federal requirement for a pre-construction conference, however the State of Oregon includes this as a special condition in its grant contracts. This ensures that the applicable federal and/or state labor

standards and requirements are discussed with the general (prime) contractor before the first draw of grant funds for construction expenses. The discussion can take place at a pre-construction conference or in a separate meeting between the grant recipient and the general contractor.

Notify the department's Regional Coordinator at least **10 days** before scheduling the pre-construction conference or meeting. The Coordinator will send you the latest version of a "Pre-construction Conference Packet" that includes such items as outlines to follow, notices, forms, a poster and a copy of a *Contractor's Guide to Davis Bacon*.

It is very important that the contractor and subcontractors fully understand their obligations under federal labor standards. *Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects*, found online at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/4812LR The guide clearly explains wage and reporting requirements, discusses common errors and how to correct them.

Pre-Construction Conference Minutes

The minutes from the preconstruction conference or meeting **must be submitted to OBDD prior to, or with, the first drawdown for construction funds**. The minutes should contain the information described in **Exhibit 6E** and must be signed by the general contractor and recipient.

Notice of Construction Contract Award and Start of Construction

There is no longer a federal requirement for A *Notice of Construction Contract Award and Start of Construction*, however the State of Oregon includes this as a special condition in its grant contracts. The notice, **Exhibit 6F**, must be submitted to the Regional Coordinator at OBDD prior to requesting any funds for construction. It contains information about the general contractor, the applicable Wage Decision, and the Pre-construction Conference. This form may be submitted at the same time as the Pre-construction Conference minutes.

Contractor/ Subcontractor Agreements and Fringe Benefit Summaries

All construction contractors and subcontractors must submit a *Contractor/Subcontractor Agreement and Fringe Benefit Summary Form* to the recipient (**Exhibit 6G**). The form must be signed by the contractors and subcontractors and be submitted to the recipient before that contractor or subcontractor receives any payments for work on the project. This agreement certifies the contractor's and subcontractor's intent to comply with labor standards provisions, HUD 4010, documents that the subcontractor is an independent contractor registered with the CCB, and provides payroll signature authorization. It also contains a required *Certification Regarding Lobbying*. All agreements and fringe benefit summary forms must be kept in the recipient's files. These do not take place of signed subcontracts.

Labor Standards Checklist

To assure that each contractor and subcontractor has completed all necessary steps to legally perform work on the project, a *Labor Standards Checklist* has been attached as **Exhibit 6H**. Use of the Checklist is for the convenience of the recipient and is not required.

Required Postings

The wage determination (including any additional classification and wage rates) 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. Davis Bacon Posters are available in Exhibit 6R.

- WH-1321 (DB Poster – English):
<https://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
- WH-1321 (DB Poster – Spanish):
<https://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>
- BOLI requires posting of its applicable wage rates and the details of any fringe benefit plans.

Certified Payroll forms (CPR's)

Each contractor or subcontractor engaged in work covered by the labor standards must submit to the recipient a weekly Certified Payroll Report (CPR) (**Exhibit 6I**) for all weeks in which workers are on the job. Revised Davis-Bacon posters (WH-1321) and payroll form (WH-347) are available through the Office of Labor Relations web site at

<https://www.hudexchange.info/resource/2664/wh-347-payroll/>

Each CPR must be filled in correctly and completely. If there are errors the form must be resubmitted.

The Department of Labor (DOL) revised regulations concerning the information reported on payrolls for Davis-Bacon covered projects. These changes became effective January 18, 2009. Under the new rules, employee addresses and full Social Security Numbers shall not be included on the payroll report. Instead, payrolls need to include the employee(s) name and an individually identifying number, for example, the last four digits of the employee's Social Security Number. Employers (prime contractors and subcontractors) must maintain the current address and full Social Security Number for each employee **and** must provide this information upon request to the contracting agency or other authorized representation responsible for Federal labor standards compliance monitoring.

IMPORTANT: The certified payroll report for Oregon WH-38, is **not** acceptable for CDBG-funded projects because it does not reference the federal regulations that apply to the project. If the contractor or subcontract chooses to use PWR forms, all information not included on the federal forms must be added and a proper statement of compliance (**Exhibit 6J**) is submitted with each weekly payroll report.

Oregon law requires that workers on projects funded in whole or in part with federal funds will be paid the higher of either the federal Davis-Bacon rates or Oregon prevailing wage rates (also called "PWR" or "little Davis-Bacon"). In addition, the project is also subject to

compliance with all BOLI requirements. **Exhibit 6K**, contains a combined certified payroll report to use in complying with both the federal and BOLI prevailing wage rate requirements.

Alternate CPR's

The contractor may use an alternate CPR form **only if** the computer-generated form contains all the same information that is included in **Exhibit 6I**. The information must be easy to locate **and** the weekly CPR reports must be accompanied by proper federal statements of compliance (**Exhibit 6J**). The only exception is Column 2, on WH347, (and Column 2(a) on **Exhibit 6K**) pertaining to "number of exemptions". This item is optional.

Note: the BOLI WH-38 CPR contains an updated statement of compliance that meets both the federal and state requirements. However, the payroll form itself does not. Recipient may choose to use this statement of compliance with their alternate CPR's.

No Work Performed Report

For week(s) in which no work is performed, it is recommended to document that fact. During the project, labor standards compliance will be monitored and written records will clearly establish that there are no missing payroll reports. This can be done by either writing on a weekly payroll report or using the form shown as **Exhibit 6L**.

Certified Payroll Reviews (CPR's)

The recipient is responsible for reviewing all weekly certified payroll reports, ensuring wages are paid weekly in an amount no less

than identified in the federal prevailing wage determination, applicable to the project, in addition to the following:

- Submitted on time within 7-10 business days after the reported working week, signed with original signature in ink.
- Completed properly with names, individual identifying numbers, and job classifications for each employee were included.
- All “self-employed owner/operator” subcontractors, with no employees, are reported on the Prime Contractors CPR’s.
 - The payroll reports for their general contractor; or
 - The payroll reports for another subcontractor that is not exempt; or
 - The “owner operator” can complete their own payroll report and the general or non-exempt subcontractor can co-sign the report.
- Generally, when the owner of the construction company is working with their employees and is performing work (less than 20% of the total time on-site) covered by the Davis Bacon wage decision, the owner does not have to be listed on the CPR, other than supervisor/owner with their name. It is recommended to show the total hours worked on-site per week and the amount of hours spent performing work covered by the Davis Bacon wage decision, to document the amount of time spent working in the covered classification was less than 20%.
- Generally, when the owner of the construction company is working with their employees and is performing work (more than 20% of the total time on-site) covered by the Davis Bacon wage decision, the owner must list the following information for themselves: name, individual identifying number, classification of work being

performed, daily hours worked on-site, total hours worked on site per week, rate of pay, fringe benefits etc.

- The CPRs contain the proper wages, fringe and zone pay for each employee.
- The proper trade classifications are listed on the CPR for each employee.
- The CPR’s contain only permissible deductions such as: Social Security (SSI), Federal tax, State tax, bona fide pre-payment of wages, court ordered payments, safety requirements (FSLA), reasonable costs of board and lodging not provided by the contractor (advances). **The first time a certified payroll shows voluntary deductions have been taken out of the employee’s wages, a copy of the employees written authorization to the contractor authorizing the deduction(s) must be provided with the CPR.**
- Where fringe benefits (Life Insurance, Health Insurance, Pension) are paid into plans, block 4(a) on the back of the CPR must be marked.
 - When the hourly wage rate paid is the same as or greater than the hourly wage rate plus fringe required for the applicable decision and the “Fringe Benefit Paid Into Plan” box on the back of the CPR is marked, the fringe benefit requirement is complete.
 - However, any time a contractor indicates fringe benefits being provided are used to compensate for not paying hourly wages in cash equal to the amount required in the applicable wage decision, the contractor should be required to provide documentation explaining the nature of the hourly dollar value of all fringe benefits being provided.
 - If a recipient has any reason to question whether the contractor is actually paying

fringe benefits as claimed, documentation should be requested from the contractor and verified.

- Where apprentices and trainees are identified on the CPR, documentation must be received with the CPR showing they are officially under a State (BOLI), Federal Bureau of Apprenticeship program or Union program. The documentation must list the employee name, classification, and rate of pay.
- Ensure that zone pay, if required by the applicable wage decision, is paid to the employee. Each category in the wage decision is established by Union negotiation or survey. To calculate zone pay, the recipient must refer to the actual union agreement applicable to each section of the wage decision.

Note: if federal withholding is missing from the CPRs, the grant recipient is required to send a copy of the CDBPRs to OBDD that reflects wages paid without tax deduction, along with the required labor standard enforcement report information.

Project Wage Rate Sheet

The *Project Wage Rate Sheet* (**Exhibit 6M**) can be used as an easy reference for all work classifications and wage rates that apply to a specific project. It is available for download at <https://www.hudexchange.info/resource/2496/hud-form-4720-project-wage-rate-sheet/>

Fringe Benefits and Zone Pay

The Davis Bacon (DB) prevailing wage is made up of three components: DB basic hourly wage; hourly fringe benefit; and, hourly zone pay.

Note: Fringe benefits and if applicable zone

*pay must be paid for all hours worked including overtime hours. Fringe benefits and zone pay are **not** subject to the halftime premium due as overtime pay.*

Fringe Benefits - Along with the basic hourly rate, a fringe benefit amount will be listed for any classification in which fringe benefits were found to be prevailing. This hourly fringe benefit amount may be met by any combination of cash, bona fide third party benefit plans or unfunded plans. Funded plan fringe benefits generally include: life insurance, health insurance and pension plans. Unfunded plan benefits generally include vacation, sick leave and holiday pay.

Contributions to fringe benefit plans must be made quarterly.

- **Cash** – Payment of the required hourly fringe benefit amount in cash to the employee.
- **Funded Plans** – Contractors fringe benefit contributions made irrevocably to a trustee, third party or union pursuant to a fund, plan or program, can be credited toward meeting this requirements, without prior State approval.
- **Unfunded Plans** – Fringe benefit plan or program under which the cost a contractor may reasonably anticipate in providing benefits that will be paid from the general assets of the contractor (rather than funded by payments to a trustee or third party) is generally referred to as an unfunded plan. Fringe benefits to these types of plans must be made in cash, as approval of these unfunded plans can take a long time.

Zone Pay – When a trade requires zone pay, this typically means cash to the employee in

the amount the hourly zone pay required. Each category in the wage decision is established by Union negotiation or survey. To calculate zone pay, the recipient must refer to the actual union agreement applicable to each section of the wage decision.

Fringe Benefit and Zone Pay for Apprentices – Every apprentice must be paid at not less than the rate specified in the registered apprenticeship program for apprentice's level of progress, which is expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentice shall be paid fringe benefits in accordance with the written 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 applicable wage determination for the applicable classification.

Federal Overtime Requirements

The Contract Work Hours and Safety Standards Act requires that persons performing the work of laborers or mechanics under contracts that exceed \$100,000 must be paid no less than one and one-half times the basic rate of pay for weeks in which they work more than 40 hours (required Davis Bacon base rate (no exceptions) x 1.5 + fringe benefits + zone pay = overtime rate). The federal Fair Labor Standards Act requires weekly overtime pay for contracts under the \$100,000 threshold.

State Overtime Requirements

State of Oregon law for overtime pay is not the same as federal law. The state's statutes (ORS 279C.520, 279C.540 and 279C.800 et seq) do not

exempt federally funded projects from the state overtime law. State overtime law requires payment of overtime to workers that are employed in excess of 8 hours per day, when working on a 5/8s schedule or in excess or 10 hours per day when working a 4/10s schedule or for hours worked over 40 hours in any one work week. Overtime is also required to be paid for work on Saturday, Sunday and six legal holidays. This is required to be paid regardless of whether 40 hours have been worked in a week.

Note: The State's overtime laws do not apply if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

Compliance with Overtime Laws

The Oregon Business Development Department is not responsible for monitoring and enforcing the state overtime laws. However, recipients that do not understand or ignore the law are liable for substantial additional costs and/or lawsuits from contractors or workers. Federal rules prohibit the use of grant funds to pay any costs resulting from violations of, or failure to comply with federal, state and local laws.

Question about State Law – should be directed to:

Oregon Bureau of Labor and Industries
Wage and Hour Division

800 NE Oregon Street Suite 1045

Portland, OR 97232

Email: mailb@boli.state.or.us

(971)673-0761, or at :

<http://www.oregon.gov/BOLI/pages/index.asp>

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Investigating Overtime Violations

When a recipient determines that a contractor has violated CWHSSA requirements by failing to compensate a worker appropriately for overtime, the following steps must be taken.

- Determine the number of occurrences per employee and calculate the amount due to each employee.
- Inform the prime contractor (who is responsible for the correction of all violations) in writing of the violation(s) specifying that the violations must be corrected within 30-days and what documentation will be accepted as proof of payment to the underpaid employees. The contractor will be required to report the restitution paid on a corrected/amended CPR, with a signed statement of compliance. The amended CPR must include for each employee to whom restitution was due: name, work classification, total number of hours involved, the adjustment rate (difference between the rate that was paid and the required rate), the gross amount of restitution, deductions, and the net amount paid. Each employee who has received restitution must sign and date the corrected/amended payroll as receipt of payment.
- Calculate the amount of liquidated damages due (i.e., \$10 per violation, per employee, per day, and inform the prime contractor in writing of the amount of the computations.
- The contractor shall have 60 days to file a written request for waiver or reduction of liquidated damages; any such request shall be accompanied by a written statement of the reasons why the waiver or reduction is justified. Note: The only grounds for requesting a waiver or reduction are that the computation of the liquidated damages is incorrect or that the violation occurred

inadvertently notwithstanding the exercise of due care; and that absent a timely waiver or reduction request, the determination is final. HUD handbook 1344.1, Rev 1, Change 1, Section 3-4(f).

- If the amount of the violation is under \$10, the violation does not need to be reported to OBDD.
- Amounts in excess of \$10 per worker require copies of corrected/amended CPR's, with the employee's signature and date.
- If over \$10, the violation must be reported in writing to OBDD. Anytime the violation is \$10 to \$999.99 the recipient should use **Exhibit 6N** to make the report to OBDD.
- If \$1,000.00 or more, the recipient must prepare and submit a labor standards enforcement report, described later in this chapter.
- Any waiver of fines must be reported to OBDD.

Apprentices, Trainees and Helpers

Three special classes of employees may be employed on federally funded projects and can be compensated at less than the Davis Bacon prevailing wages. These are:

Apprentices - are permitted to work at less than the predetermined rate for the work they perform only when they are individually registered in a bona fide apprenticeship program with the federal Bureau of Apprenticeship and Training or BOLI's Apprenticeship and Training Division. The following conditions must be met when apprentices are working on the job:

- The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the

contractor as to the entire workforce under the registered program;

- Any worker listed on a payroll at an apprentice wage rate, who is not a trainee as defined below, or is not registered, or otherwise employed as stated above, must be paid the full wage rate for the classification of work actually being performed on the job;
- The contractor or subcontractor, with the first payroll on which that apprentice appears, is required to furnish written evidence of apprenticeship registration, for any apprentice working on the job; and
- The wage rate paid to apprentices shall be not less than the specified rate in the registered program for the apprentices' level of progress expressed as a percentage of the journeymen's rate contained in the applicable Wage Determination. Please use the *Apprenticeship Wage Rate Calculation Guide* attached as **Exhibit 6O**.

Trainees - will be permitted to work at less than the predetermined rate for the work performed only if they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the federal Bureau of Apprenticeship and Training or the Apprenticeship and Training Division of BOLI.

Helpers - who use tools in assisting mechanics and who are also paid below the minimum rates for mechanics are generally not acceptable, since apprentices and trainees are recognized as the individuals who perform less skilled craft work during their training period. If "Helpers" are to be employed on the project, they must be identified in a *Request for Authorization of Additional Classification and Rate for Wage Determination* and paid the

rate deemed appropriate by the Department of Labor.

Employee Interviews

Interviews with employees provide a check against payroll data. Contractors must allow access to workers. All information received from employees is confidential and can be released to the employer only with the employee's written permission. The interviews must be conducted on-site unless an exception is received and approved by OBDD to allow the interviews to be conducted by mail, telephone, e-mail, etc. To deviate from the on-site requirement, there must truly be a reason/situation that is beyond the control of the recipient to warrant the alternate interview methods.

Employee interviews must be conducted by the recipient or grant administrator, not the project engineer. Interview forms must be completed for a representative sample of all worker classifications on the job and must be sufficient to establish the degree of compliance and to indicate the nature and extent of violations, if any.

Each interview should be documented using the Record of Employee Interview located in **Exhibit 6P** and online at <https://www.hudexchange.info/resource/2487/hud-form-11-record-of-employee-interview/> HUD also has a Spanish form, HUD 11sp on-line.

For each month the project is under construction the minimum monthly requirement is:

1. At least one worker interview from every contractor represented on the job; and
2. Worker interviews must be collected from different worker classifications.
3. **All interviews must occur on the job-site**, during working hours, in a place that permits privacy for the employee, and of, a duration that causes the least amount of disruption to the on-going construction work. The interviewed employee must sign and date the HUD-11 form at completion of the on-site interview.
4. The grant recipient must clearly describe the on-site observations, particularly with respect to duties actually performed by the employee and tools used. In addition, the grant recipient needs to indicate whether the employee's statements and the grant recipient's observations are consistent. Any discrepancies must be noted on the HUD-11 interview form. Then the grant recipient must sign and date the HUD-11 form.
5. The completed HUD-11 forms must be promptly compared to the corresponding certified payroll report (CPR) during regular CPR reviews. The results of the comparison, including discrepancies must be noted in the space provided on the HUD-11 form. The grant recipient shall sign and date each HUD-11 form at the completion of this comparison, under payroll examiner.

When conducting worker interviews:

- Identify yourself.
- Confirm with identification.
- Explain that the project is being funded with federal funds.
- Explain the purpose of the interview and that it is confidential.

- Advise the employee that the prevailing wages applicable are posted and where they are posted.

Additional (Targeted) On-Site Interviews

Where spot checks review and CPR reviews or the HUD-11 and CPR comparisons indicate the grant recipient the potential for underpayments may exist, additional (targeted) interviews to the particular laborers or mechanics or the employees of certain employers shall be conducted. In such cases, the grant recipient must prepare a memorandum to OBDD-IFA describing the suspected violations and requesting authority to conduct additional (targeted) on-site interviews appropriate to the suspected potential violations. Grant recipients are expected to conduct additional on-site interviews as circumstances warrant, to determine compliance. Additional (targeted) on-site interviews need to focus on contractors where violations are suspected and the interview data can be most useful. Targeting may mean that no interviews are conducted on certain contracts where remote monitoring (such a certified payroll reviews) indicates full compliance so that more interviews may be conducted where problems might be indicated.

Questionnaires:

Questionnaires are to be mailed to employees that have not been interviewed, when the grant recipient has reason to doubt the accuracy of the certified payroll reports and the potential for underpayments is suspected. The questionnaires are used to test the accuracy of the CPR's and/or obtain the

employee's version of the working conditions. The Federal Labor Standards Questionnaire form HUD-4730 must be used for this purpose.

The new additional guidance will be incorporated into the next edition of the Grant Management Handbook but until then please add this to your existing labor standards requirements file. Thank you for your assistance with these new requirements and if you have any questions please let us know.

Worker Complaint Form

Employees of federally funded projects subject to the requirements of the federal labor standards provisions may file a complaint using the form located at <http://www.hud.gov/offices/adm/hudclips/forms> and included as **Exhibit 6T** "Federal Labor Standards Complaint Form HUD form 4731". Worker complaints must be kept confidential and be given priority as required by 29 CFR Part 5.6(3).

Compliance Reviews

Recipients are required to conduct compliance reviews and investigations to ensure compliance with labor standards. The reviews must include:

- Checking that the project Wage Determination and the Davis-Bacon Poster provided by OBDD are displayed at the job site in an area easily accessible to all employees. The Department of Labor revised the Davis-Bacon Poster (WH-1321). The new poster is available in English and Spanish. The revised poster is available through the Office of Labor Relations web

site -

https://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement - under *Resources, Labor Relations Forms*.

- Checking all the contractors and subcontractors Certified Payroll Reports to verify that the correct wages are being paid, and they are signed by the authorized person. The *Project Wage Rate Sheet (Exhibit 6M)* can be a handy reference for verification.
- Being alert for some common falsification indicators such as the ratio of laborers to mechanics, too few or irregular hours, discrepancies in wage computations and extraordinary deductions.
- Verifying wages through worker interviews using Record of Employee Interview attached as **Exhibit 6P** and available at https://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud4. See below for more information.
- Reviewing the use of apprentices, trainees; and helpers.
- Reviewing overtime payments; and
- Maintaining documentation of compliance reviews and inspections in the project files.

Overpayments

If an employee has been overpaid, the contractor which made the overpayment cannot request the overpaid wages be returned by the employee, as this would constitute a violation of the Copeland Act.

Violations

Many compliance reviews will disclose minor discrepancies that do not involve or suggest falsification or willful violations. Rather than prepare a written notice to the contractor for

such routine corrections, the Recipient may communicate these results informally, by telephone, for example. A record of the communication must be maintained so that any outstanding requests for corrective actions may be tracked to closure.

Violations for labor standards may be found as result of either investigation of a worker complaint or a routine monitoring for compliance, review of payroll documents and investigations. All violations must be dealt with promptly.

Documentation is critical, and all enforcement activities and findings must be documented in writing. The contractor has the right to appeal any findings. An appeal can be won by the contractor if there is poor documentation of violation or sanctions.

Investigating Underpayment Violations

When conducting investigations HUD has a Labor Standards Questionnaire form (HUD 4730) that can mailed in self-addressed stamped envelopes to employees. The form can be located in **Exhibit 6S** or at <https://www.hudexchange.info/resource/2497/hud-form-4730-federal-labor-standards-questionnaire/>

The following steps are required to resolve mathematical errors, miscalculations, or other errors that result in the underpayment of wage, fringe, or zone pay.

- Calculate the difference between what should have been paid and what was paid.
- Inform the prime contractor (who is responsible for the correction of all

violations) in writing of the violation(s) specifying that the violations and what must be corrected within 30-days and what documentation will be accepted as proof of payment to the underpaid employees. The contractor will be required to report the restitution paid on a corrected/amended CPR, with a signed statement of compliance. The amended CPR must include for each employee to whom restitution was due: name, work classification, total number of hours involved, the adjustment rate (difference between the rate that was paid and the required rate), the gross amount of restitution, deductions, and the net amount paid. Each employee who has received restitution must sign and date the corrected/amended payroll as receipt of payment.

- If the amount of the violation is under \$10 per worker, contractor confirmation of wage restitution is not required.
- Amounts in excess of \$10 per worker require copies of corrected/amended CPR's, with the employee's signature and date.
- If over \$10, the violation must be reported in writing to OBDD. Anytime the violation is \$10 to \$999.99 the recipient should use **Exhibit 6N** to make the report to OBDD.
- If \$1,000.00 or more, per contractor, the recipient should prepare and submit a labor standards enforcement report, described later in this chapter.

Underpayment Remedies

The grant recipient must notify the prime contractor of any underpayments found during payroll review in writing. This notification must describe the underpayments and the computations and instructions for making wage restitution along with providing

information about appeal rights. The contractor is allowed 30 days to correct underpayments, provide amended certified weekly payroll reports and documentation that restitution was made or appeal the decision. Please contact the department's Regional Coordinator for appeal language, as it may vary depending upon the violations being encountered.

Remedies:

- Withholding of contract payments for alleged wage underpayments may occur 30 days after notification to the prime contractor. Only the amount necessary to meet the contractor's (and/or subcontractors') liability shall be withheld.
- What about CPRs not submitted in required timeframe? – Essentially underpayments until submitted. Davis-Bacon guidelines are silent or vague on remedies possible when CPRs are not submitted, however the recipient has the ability to recommend potential debarments, cross withholding and sanctions at the completion of the investigation.
- **BOLI can enforce rules** in OAR 839-025-0010 (5): If the contractor fails to submit its payroll and certified statement forms to the public contracting agency as required by subsection (3) above, the public contracting agency must retain 25 percent of any amount earned by the contractor until the contractor has submitted the required payroll and certified statements to the public contracting agency.

Underpayments less than \$1,000 per Contractor

Make sure unpaid wages are paid. If the violation involved federal overtime provisions, make sure the liquidated damages have been computed and withheld. The grant recipient must file a report with OBDD detailing the restitution amounts, contractors involved, corrective actions taken and any unresolved issues, if any. This report should be submitted 2 weeks after completion of the investigation.

Copies of correspondence sent to recipient/prime contractor/subcontractor with all above-required information will work as the report. A copy of payroll check for the restitution, amended CPR or other form of receipt signed by the affected employee as evidence they have received the additional payment should be included for those resolved.

Underpayments in excess of \$1,000 per Contractor

Underpayments exceeding \$1,000 per contractor, triggers the reporting and enforcement requirements of 1344.1. The grant recipient must submit the following to the State, immediately following completion of the investigation (usually allow two weeks for the recipient) because the State has to review this information and submit the 5.7(a) report to USDOL and HUD. The State must submit this report within 45 days after completion of the investigation:

- Project Name, location and contract number (CDBG Project Number and any other contract numbers between the recipient and prime).

- Date of bid opening and contract award date.
- Copy and provide DB wage modification and amendment number applicable to the project.
- Identify prime contractor and names of affected employees:
 - Name, address, SS#, total underpayment, total restitution due or made.
- Identify subcontractors and names of their affected employees:
 - Name, address, SS#, total underpayment, total restitution due or made.
- Copies of pertinent contract documents, contractor/subcontractor agreement, certified payroll reports (CPRs), amended CPR's, employee interview forms, and any other related material that substantiates the violations, restitution (documentation verifying employees were paid back-due wages, cancelled checks, signed statements from the employee etc. or other actions).
- Detailed narrative as to the violations leading to restitution. This should include the information necessary for the state to complete the 5.7(b) investigative report requirements. The state must submit the following:
 - Brief statement of circumstances that brought about the investigation.
 - A statement concerning the conduct and extent of the investigation, that is, who the investigator talked with, which records were examined, and any other action taken.
 - A statement of facts concerning what the investigation disclosed. Were allegations proven, if so how? If dispelled, how?

- Conclusion of the investigator as to willfulness, negligence, or other factors involved in the matter.
 - Where appropriate a recommendation of the investigator and justification as to sanctions, if any, recommended against the contractor(s) involved. Should there be such a recommendation, further documentation may be required. This should include the reasons for the recommendation and facts supporting them, or if the matter was unresolved, how was/will resolution accomplished.
- If underpayments related to improper overtime pay (1.5 times the hours worked per week in excess of 40 hours), the grant recipient must provide sufficient information concerning the nature of the overtime violations and restitution, plus an assessment of liquidated damages computed under the Contract Works Hours and Safety Standards Act. This information is necessary to allow for any appropriate adjustment requested by the contractor and for final action or recommendation by HUD to the US Department of Labor.

Note: The contractor/subcontractor is responsible and liable for unpaid wages and for liquidated damages to the United States in the sum of \$10.00 per person, per each calendar day for each violation.

Underpayments, in any amount, believed to be aggravated or willful

The grant recipient should prepare the information required above as required by

1344.1 and contact the department immediately for assistance.

Unfound Workers

Sometimes wage restitution cannot be paid to affected employees, because the employee has moved and cannot be located. The contractors must provide, for any workers that cannot be located, their names, SS#'s, last known address, and the gross amounts due. At the end of the project, the prime contractor must notify the grant recipient and the grant recipient will be required to submit the wage restitution owed along with documentation that the recipient exercised due diligence in trying to locate the worker(s).

In the past if a CDBG funded construction project, had unfound workers, the city/county grant recipient was required to establish an escrow account for the unfound workers restitution and to continue attempting to locate the workers for 3 years. If after 3 years the, workers were still not found, the funds within the escrow account were to be transferred to HUD.

In the last year, HUD has changed its policy regarding escrow accounts. HUD now maintains all unfound worker escrow accounts on behalf of the city/county grant recipient and conducts searches to locate the worker(s) on a regular basis.

The updated procedures are identified below, however the forms are not provided, as they change frequently and will be requested by OBDD from HUD for each project as needed.

1. Once the grant recipient completes the forms, the draft forms must be returned to

OBDD-IFA and forwarded to the CDBG PPC's, so that they can forward the draft forms to HUD to obtain the necessary HUD banking information for the US Treasury and HUD approval to wire transfer the funds.

2. Once OBDD receives HUD approval to wire transfer the funds, the grant recipient will need to take HUD form 4733 to their bank to transfer the funds.
3. After the wire transfer occurs:
 - a. The recipient is required to provide OBDD-IFA the forms a 2nd time, for final submission to HUD.
 - b. In addition, the bank will provide the recipient a form back showing that the wire transfer took place along with a set of numbers so that the transfer can be tracked. This form must be e-mailed to OBDD-IFA, along with a signed copy of HUD form 4733. The originals must also be mailed hard copy to OBDD-IFA for submission to HUD.

The grant recipient cannot send the wire transfer in without HUD approval. The grant recipient must not take this to the bank for wire transfer until OBDD receives HUD's approval.

Quick Reference Guide

| Labor Standards Quick Reference Guide | | |
|---|---|---|
| Underpayments in General | As soon as possible after discovery, grant recipient notifies prime contractor and calls OBDD RC. | Contractor is allowed 30 days to correct the situation, amended CPR's, evidence of restitution etc. |
| Underpayments of less than \$1,000 | At completion of 30 days notify OBDD RC of the outcome and provide report. | Due 2 weeks after receipt of contractors submission. |
| Underpayments exceeding \$1,000 | Grant recipient must notify OBDD and receive direction of completing requirements of 1344.1. | Due 2 weeks after completion of the underpayment investigation. |
| 5.7(a) Report – Labor Standards Enforcement Report for underpayments in excess of \$1,000 per contractor. | OBDD prepares report based upon 1344.1 information submitted by the grant recipient. | State has 45 days to submit the 5.7(a) report to HUD's Office of Labor Relations |
| | HUD's Office of Labor Relations reviews reports and submits to US DOL. | HUD has 15 days to review and provide report to USDOL. |
| 5.7(b) – Semi Annual Labor Standards Enforcement Report | All CDBG funded construction project underpayments must be reported on this report by the RC's. | Report is due in April and October each year. |

Willful Violators

Determinations involving willful violations, falsification and/or large findings of underpayment must be communicated to the prime contractor in writing, particularly if withholding from contract payments is contemplated.

While any violation disclosed on a federally funded project must be rectified, the focus of HUD enforcement activities will be on willful violators that know what is required of them, but purposely underpay their employees. These cases involve the most egregious violations and the most wage restitution. Such employers may face debarment from further participation in HUD programs.

Sanctions

The following sanctions will apply to recipients for non-compliance with federal labor standards:

Where the recipient's performance with respect to labor standards administration and enforcement is found not in conformance with the requirements of the federal **Housing and Community Development Act of 1974**, and applicable implementing regulations, the provisions of section 570.496 of the regulations are effective (<https://www.hudexchange.info/community-development/cdbg-laws-and-regulations/>). Payments from the grant may be terminated, reduced or otherwise limited.

Violations of the **Copeland, Anti-Kickback Act** by contractors could be the basis for termination of contract and could result in criminal prosecution by the Federal

Government pursuant to 18USC874 for up to 5 years in prison or a \$5,000 fine or both.

Fraudulent execution of the requisite statement of compliance could result in prosecution under False Information Act 18USC1001, 18USC1020 or 31USC231. More information may be found at <https://www.dol.gov/whd/govcontracts/copeland.htm> .

Violations of the Contract Work Hours and Safety Standards Act make the contractor and any subcontractor responsible and liable for unpaid wages and for liquidated damages to the United States in the sum of \$10.00 per person, per calendar day for each violation. International violations are a federal misdemeanor, punishable for each and every offense by a fine of not more than six months, or both. Violations may also be grounds for termination of contract. Information is available at <https://www.dol.gov/whd/govcontracts/cwhssa.htm> .

The liquidated damages must be sent directly to HUD by the grant recipient via the violating construction contractor. The HUD Labor Relations Office no longer accepts checks for payment and requires all payments to be made electronically. **Exhibit 6Q** contains the most recent version of the forms required for this transaction. However, please contact OBDD to ensure these forms are the most recent being used by HUD before they are completed. In order to complete the form, OBDD-IFA will need to contact our HUD-LR Office to obtain the Deposit Control ID, and the Ticket #.

Volunteers

Federal Law

Volunteers on Community Development Block Grant projects are exempt from the prevailing wage law (Davis-Bacon) requirements if they are providing their services to a local government and they are not otherwise employed, at any time, on the project. Volunteers cannot be paid for materials or supplies unless the recipient has obtained the items in compliance with state procurement law.

For other specific rules as to who qualifies as a “volunteer”, when Davis-Bacon or PWR wages can be waived, etc., please see 24 CFR Part 70. The code is also available online at http://www.access.gpo.gov/nara/cfr/waisidx_07/24cfr70_07.html

Volunteers—State Law

The Oregon Business Development Department does not monitor or enforce state laws concerning the use of volunteers. The following information is provided only as general information, which may be of use to recipients and their legal advisors.

Under the Oregon Minimum Wage and Overtime law, volunteers must meet four criteria in order to operate outside the employment relationship . See BOLI’s website: http://www.oregon.gov/BOLI/TA/pages/T_FAQ_Tafaq.aspx for FAQ about the use of volunteers:

- The work must be for a public service of humanitarian act; and
- At the volunteer’s own initiative; and
- Without any expectation of pay; and

- If the volunteer is employed for other purposes, the volunteer duties may not be the same as their regular work duties.

A person performing services on a volunteer basis for a nonprofit, religious, charitable or relief organization, whether or not such person receives meals or lodging or nominal reimbursements or vouchers for meals lodging or expenses is not subject to the Worker's Compensation Law as allowed by ORS 656.027(19).

Use of Volunteers

THE USE OF VOLUNTEERS MUST BE PRE-APPROVED BY HUD AND OBDD PRIOR TO PROJECT COMMENCEMENT AS REQUIRED BY 24 CFR PART 70.5(b). The recipient must provide enough information sufficient to make a determination for review.

Volunteers can help reduce construction and other program costs. However, the presence of volunteers on a construction project/site may also result in coordination problems with contractors, quality of work issues and potential government liability for personal injury and property damage. Recipients planning to use volunteers in their construction projects should review with their legal counsel the conditions for using volunteers and take appropriate measures to protect the jurisdiction from liability. **In addition the recipient needs to inform the department's Regional Coordinator so the proper reporting system can be established that will meet the requirements of the U.S. Department of Housing and Urban Development.**

If volunteers are going to be used on the project, the recipient must comply with the following requirements:

1. If the project will involve volunteers that will receive any kind of benefits (e.g., workers compensation coverage in case of injury), then the recipient must get preapproval from Housing and Urban Development through the Oregon Business Development Department. In addition, the recipient must keep and submit the following documents to the Department for review and to be submitted to Housing and Urban Development:
 - a) For projects that include paid construction workers, the recipient must record volunteers names and hours volunteered; and
 - b) For projects that will only use volunteers, recipients must record the number of volunteers and the number of hours they worked, collectively.
2. If none of the project volunteers will receive benefits, then preapproval is not required but the same information as described above in 1a. and 1b. is required.

Volunteer Labor Value

The federal regulations do not require any specific reporting format. Recipients may use the certified payroll report form to keep the required records because it will capture all the necessary information and reduce the chance of misunderstandings.

For purposes of documenting local match, volunteer labor is to be valued as follows:

- The time of the persons that are donating their professional skills (e.g., an electrician who donates time to install wiring) shall be credited at their standard hourly rate.

- The time of persons providing labor for which they are not normally paid (e.g., a teacher that volunteers to do carpentry work) shall be credited at the state's current minimum wage (as of January 1, 2013 it is \$8.95 per hour).

Prisoners

There is no prohibition against the use of prison inmate labor on federally funded projects, but they do not qualify as volunteers. The Davis-Bacon wage requirements would apply.

Labor Standards Enforcement File

Federal regulations require that recipients maintain full documentation of labor standards administration and enforcement activities. Recipients, or their grant administrator, may develop their own filing systems provided that specific files can be made available upon request by authorized representatives of OBDD, HUD and/or the DOL. It is also important that the contract administrator is able to retrieve from the files the documentation evidencing that all actions required for labor standards administration and enforcement were taken. At a minimum, the file should contain:

- Documentation of contractor selection process
- Wage Determination, including effective modifications and additions
- Verification of contractor/subcontractors CCB registration
- Verification of contractor eligibility
- Responsible Bidder Determination Form
- Evidence of contractor Public Works Bond

- Pre-construction Conference documentation, including signed minutes
- Contractor/Subcontractor Agreement and Fringe Benefit Summary Form for each prime contractor and every subcontractor
- Notice of Construction Contract Award and Start of Construction
- Weekly CPR forms and signed Statements of Compliance
- Evidence that payrolls were checked against applicable wage rates
- Documentation of registered apprentices or trainees
- Record of Employee Interviews
- Record of contacts with contractor regarding labor standard matters
- Evidence of restitution/resolution of discrepancies, if any

The file containing certified payrolls and related documents must be preserved for a period of not less than three years after completion of the contract or project.

Available Resources

Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted construction Projects – https://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/4812LR .

Coordinating with Other Agencies

Recipients with projects funded through federal programs administered by other state and federal agencies will find that those agencies interpret and enforce federal labor standards requirements differently than the

than the U.S. Department of Housing and Urban Development.

Recipients with multiple sources of funds in the project must administer their grant projects in compliance with the rules that apply to the use of the Community Development Block Grant funds. OBDD Regional Coordinators can help resolve issues raised by conflicting federal and/or state agency requirements.

Quick Checklist for Labor Standards Compliance

Ensure that the State has issued the Environmental Clearance - Release of Funds – notice for this project prior to awarding any construction contracts.

Note: Any form contained as an Exhibit to this Chapter, that states submit the form to HUD, MUST be interpreted as submitting the form to OBDD, not HUD.

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| | 1. OBDD has reviewed and approved bid documents; this must be done 10 days before the bid advertisement. |
| | 2. Include Labor Standards Provisions (HUD 4010) and applicable wage rates (higher of either Davis-Bacon rates or the Oregon Bureau of Labor Industries (BOLI) rates) in all bid and contract documents. |
| | 3. In Verify wage rates with OBDD 10 days prior to bid opening; notify plan holders of any modifications. |
| | 4. Prior to awarding the construction contract: <ul style="list-style-type: none"> - Verify with OBDD the general contractor eligibility (registration with the CCB and not on the Excluded Parties List) - Verify with BOLI's Ineligible list |
| | 5. Assure that general contractor has filed \$30,000 public works bond with CCB. |
| | 6. Submit a Responsible Bidder Determination form to the Construction Contractors Board. |
| | 7. Contact OBDD Regional Coordinator at least 10 days before scheduled date of preconstruction conference/meeting with general contractor to discuss labor standards compliance. |
| | 8. Request materials for preconstruction conference/meeting from OBDD at least 10 days in before scheduled conference. |
| | 9. Hold preconstruction conference/meeting attended by general (prime) contractor and subcontractors. |
| | 10. Obtain signature of general contractor on preconstruction conference notes; contractor and OBDD receive copies; recipient keeps original in local project file. |
| | 11. Submit Notice of Construction Contract Award and Start of Construction and preconstruction conference notes/minutes, certified payroll reports and all necessary first draw requirements have been sent to OBDD prior to requesting grant funds for construction. |

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| | <p>12. Post at the job site:</p> <ul style="list-style-type: none"> - Federally Required Wage and hour poster, Lock –in Davis Bacon wage determination along with the DOL approved additional Classification(s) - Applicable BOLI's wage rate - Project sign (if required) |
| | <p>13. Contractor/Subcontractor Agreement and Fringe Benefit Summary forms received by the recipient prior to release of grant funds to prime contractor for work performed by the subcontractors.</p> |
| | <p>14. Information collected about “unfunded” fringe benefit plans prior to contractors showing fringe benefit payments on payroll reports.</p> |
| | <p>15. Weekly certified payroll reports (on approved forms) submitted as required and reviewed for correct wages (including overtime pay).</p> |
| | <p>16. Apprenticeship documentation submitted with first payroll on which apprentice is shown.</p> |
| | <p>17. Employee interviews conducted at least once per month and with no less than one employee for every trade at the site. Information compared on interview forms must agree with payroll report information</p> |
| | <p>18. Payroll violations and employee complaints investigated and resolved.</p> |
| | <p>19. Submit annual Section 3 HUD 60002 reports to OBDD.</p> |
| | <p>20. Submit the Minority Business Enterprise Report (Exhibit 5B) and the final Section 3 (Exhibit 5C) report to the Oregon Business Development Department prior to final - draw down of the grant funds.</p> |
| <p>Additional Resources: HUD – Contractors Training materials: http://portal.hud.gov/hudportal/HUD?src=/states/shared/working/r10/olr/trainingcontractors</p> | |