

ReOregon

Subrecipient Manual

Version 1



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6 Labor Standards

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6 Labor Standards

6.1 Introduction

Subrecipients implementing projects involving construction contracts are required to comply with applicable labor-related laws and regulations. The responsibilities, applicable statutes, and steps to ensure compliance are included within this chapter.

Communities implementing projects involving construction contracts for public facilities, public works, infrastructure, or multifamily housing of eight units or more than \$2,000 must comply with the following laws and regulations:

1. Federal Fair Labor Standards Act; 29 USC (United States Code) Chapter 8
2. Davis-Bacon and Related Acts (DBRA); [40 USC Chapter 31, Subchapter IV](#)
3. Copeland Anti-Kickback Act; [18 USC §874](#), [40 USC §3145](#)
4. Contract Work Hours and Safety Standards Acts (CWHSSA); [Field Operations Handbook, Chapter 15](#)
5. State of Oregon Labor Standards and local laws and regulations

Information about each requirement can be found on HUD’s website at the following link: https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441

These requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process. Activities financed by CDBG that are not “construction work” do not trigger Davis-Bacon requirements, for example:

- Real property acquisition
- Architectural and engineering fees
- Other professional services (legal, accounting, testing**)
- Other non-construction items (furniture, business licenses, real estate taxes)

Davis-Bacon requirements apply to the **entire** construction contract, even if CDBG funds finance only a **portion** of a construction contract.

**Note: Drilling a test well can be considered either a component of construction or a professional service. To determine if Davis-Bacon applies to a test well, please refer to the U.S. Department of Labor (DOL) Field Operations handbook, 15d05, for additional guidance.

Subrecipients are encouraged to contact the ReOregon Program Staff assigned to its agreement to discuss any questions regarding the applicability of labor standards, their interpretation, or the associated record keeping requirements.

6.2 Subrecipient Administration of Labor Standards Requirements

The subrecipient should take the following steps to ensure compliance with required labor standards. Each of these tasks are described in detail in the following pages.

Pre-Construction Tasks

1. Designate a Labor Compliance Officer
2. Obtain the Effective Wage Determination
3. Confirm the Recommended Construction Contractor's Eligibility Status
4. Document Wage Determination
5. Award the Construction Contract
6. Hold a Pre-Construction Conference

Post Start of Construction Tasks

1. Perform Field Inspections for Labor Compliance
2. Conduct Payroll Verification Interviews
3. Maintain Compliance Records

6.2.1 Designate a Labor Compliance Officer

The subrecipient must designate an appropriate staff person to act as labor officer to ensure compliance with all requirements and to be the primary contact person for OHCS. The designee may be an employee of the subrecipient or a private consulting firm. The primary qualification of this role is to have a good understanding of HUD's overall compliance requirements with the federal prevailing wage obligations applicable to HUD funded CDBG programs.

6.2.2 Obtain the Effective Wage Determination

A wage determination, also referred to as “wage decision,” is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics which DOL has determined to be prevailing in each area for a particular type of construction. Wage determinations can be found under the [Wage Determinations page at Sam.gov](#) by selecting the project type (Public Buildings or Works), and then filtering by state and county of the project location. Subrecipients should also consult Oregon Bureau of Labor & Industries (BOLI) website (<https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>) for state prevailing wage rates, as the higher rate will apply to each project.

DOL does not wish for contract estimators to consider the constantly changing rates when preparing bids. DOL allows the wage decision in effect **10 days** before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be “locked-in” and is also called the “effective” wage decision. If more than 90 days transpires between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the “effective” wage decision.

6.2.2.1 Provide Additional Classifications

A wage determination will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If it is found that a class of laborers or mechanics not listed in the wage decision will be employed on the project, the contractor must request an additional classification.

The prime contractor will make a request if it determines its own need for an additional classification or if a subcontractor needs the additional classification. The contractor (or subcontractor) would be immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received.

Example: A prime contractor installing sewer lines may find that a boring machine operator is needed by one of its subcontractors, but such a classification is not on the wage decision. Since payrolls must reflect proper classifications for actual work performed, the prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator.

6.2.2.2 Force Account Labor

CDBG force account labor refers to the use of laborers or mechanics employed by the grantee as a contractor for the CDBG-DR construction project. In such cases, the grantee/contractor does not have to pay the Davis-Bacon wage rates but can, instead, pay

the rates normally paid to employees on staff. The amounts paid to workers on force account labor projects are allowable costs of the CDBG-DR program.

Force account labor is work conducted by the subrecipient's employees and is generally exempt from the federal prevailing wage requirements. Please contact OHCS for assistance if force account work is anticipated and to receive pre-approval from OHCS and HUD if necessary.

6.2.2.3 Construction Categories

Federal wage determinations are issued for four construction categories: Building, Residential, Heavy, and Highway, by location and include special characteristics.

In determining which rate category to choose, it is important to understand the differences to avoid paying wages from the wrong category. It is possible that more than one wage determination may apply. Use of the wrong category may leave the subrecipient responsible for restitution and penalties. The construction categories are described as follows:

- **Building** — Construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment, or supplies. This includes all construction within and including the exterior walls, both above and below grade, as well as incidental grading, utilities, and paving.
- **Residential** — Projects involving the construction, alteration, or repair of single-family houses (on single or contiguous parcels) or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. (Remember the exemption for residential structures containing not less than eight units.)
- **Highway** — Projects for the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to residential, building, or heavy construction.
- **Heavy Construction** — All construction not properly classified as Highway, Residential, or Building. Water and sewer line construction will typically be categorized as Heavy construction.

6.2.2.4 The Process of Updating Wage Determinations

DOL gathers information on a year-round basis regarding wage decisions and will often issue an update of a particular wage decision. An update of a wage decision is referred to as a “modification” or “mod.” Less frequently, DOL will issue an entire new series of wage decisions, called “supersedeas decisions,” having a new wage decision number based on a new series year.

6.2.2.5 Ten Day Responsibility

It is the subrecipient’s responsibility to ensure that the wage decision(s) that is in effect 10 days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids prior to bid opening, based on the updated wage decision(s).

The subrecipient may search the DOL website at <https://sam.gov/content/wage-determinations> to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date.

If there has been an update, the subrecipient must obtain (normally download) the updated wage decision and send a copy by addendum to all who obtained a bid package.

The Davis-Bacon requirement to “lock-in” a particular wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening.

- For housing: Wage decision “locks-in” at construction contract award or start of construction, whichever occurs first.
- For infrastructure: Wage decision “locks-in” at bid opening provided construction contract is awarded within 90 days. The labor compliance officer must confirm the wage decision if the construction contract is awarded beyond 90 days of the bid opening.

If, after the bid opening, the award of the contract is delayed by more than 90 days, the subrecipient must determine if any wage decision updates have been made by searching the Sam.gov website.

If there has been a wage decision update, the low bidder must agree, in writing, to abide by the wage decision in effect on the date of the contract award. The wage decision in effect on the contract award date must become part of the construction contract.

6.2.3 Confirm the Recommended Construction Contractor’s Eligibility Status

Prior to awarding and executing any construction contract, the subrecipient must ensure that all prime contractors (and their subcontractors) are registered with the Oregon Construction Contractors Board (CCB) and not listed as “debarred” in the System for Award Management (SAM). The subrecipient must maintain records of these verifications from the CCB and SAM website in local files.

6.2.3.1 Oregon CCB

All persons working on CDBG-funded construction projects must be registered with the CCB or be the employee of a contractor or subcontractor. Recipients must have evidence that all persons on the job as “subcontractors” are in fact “independent contractors” registered with the CCB. 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 CCB. 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 does, any construction, alteration, remodeling, or repair involving residential, commercial, industrial, or public works improvements. Violations can result in civil penalties, imposed by the CCB.

Anyone can call the CCB to verify the registration of a contractor.

6.2.3.2 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. 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 website and document the contractor’s eligibility 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

6.2.3.3 Independent Contractors

Independent contractors registered as “exempt” (those with no employees of their own) are not considered subcontractors on a job covered by the Davis-Bacon Act and HUD 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 Standards Compliance Requirements at: https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olr_9301

6.2.4 Document Wage Determination

Before awarding a construction contract to any prime contractor, the subrecipient must obtain verification of the wage decision choice. An inquiry made earlier is not sufficient as verification of the wage decision choice. The CDBG-DR program requires that the wage decision verification be obtained after the bid opening and before the award of the construction contract. The subrecipient remains responsible to ensure the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

The subrecipient must ensure that the wage decision in effect at the date of the contract award is made a part of the contract between the low bidder and the subrecipient.

6.2.4.1 Failure to Include or Use of Incorrect Wage Determination

Failure to include the effective wage decision in bid documents or contracts will not relieve the subrecipient or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the subrecipient must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract which makes the effective wage decision retroactive to the beginning of construction.

If a supplemental agreement is made, there are two ways to structure the agreement:

1. The contractor, even if not at fault, may agree to include the proper wage decision retroactively with no additional compensation — especially if the wage rate changes are minor.
2. The contractor will require that a change order be made to compensate for an increase in wages due to the observance of the effective wage decision. Such a change order would be an eligible CDBG-DR cost but would be subject to available grant funds. If grant funds are not available, local funding may be necessary.

6.2.4.2 Notification of Subcontractor Awards

The subrecipient's labor compliance officer should be notified by the prime contractor of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This allows the labor compliance officer to be knowledgeable of the time frame in which to expect the submission of subcontractor payrolls.

6.2.5 Award the Construction Contract

Each construction contract subject to Davis-Bacon labor standards requirements must include provisions containing labor standards compliance clauses and a Davis-Bacon wage decision. The labor standards compliance clauses:

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages;
- Obligate the construction contractor to comply with the labor requirements;
- Provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages;
- Enable enforcement of labor standards applicable to the project; and
- **Best Practice:** Incorporate HUD Labor Standards Form 4010 in the construction contract and provide to contractor with pre-construction information.

If the construction contract has not been awarded within 90 days after bid opening, any wage decision modification published prior to the award of the construction contract shall be effective for that construction contract.

6.2.5.1 Responsible Bidder Forms

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 website is at

https://ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/

6.2.5.2 Public Works Bond

All independent contractors working on public works projects in Oregon must obtain and file with the CCB a Public Works Bond 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

https://www.oregon.gov/ohcs/disaster-recovery/pages/reoregon.aspx?utm_source=OHCS&utm_medium=egov_redirect&utm_campaign=http%3a//re.oregon.gov

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

www.oregon.gov/biz/programs/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

6.2.5.3 Retainage

The recipient must ensure compliance with the most current Oregon Retainage and Prevailing Wage Law, and the recipient must retain at least 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 may retain funds from a first-tier subcontractor until the subcontractor has submitted the required CPR.

6.2.6 Hold Pre-construction Conference

Subrecipient should hold a preconstruction conference with the prime contractor and all available subcontractors before construction starts, when they would be advised of their responsibilities and obligations concerning labor standards. Jobsite signage requirements should be identified and mandated use of electronic payroll submissions is highly recommended.

If the subrecipient should opt to not have a preconstruction conference, then the subrecipient must utilize some method of its own choosing to advise contractors of their responsibilities and obligations concerning labor standards and other items normally covered at the preconstruction conference. The time of preconstruction conference is normally ideal to initiate the additional classification process as discussed in the following paragraphs.

6.2.7 Perform Field Inspections for Labor Compliance

The subrecipient should understand that the enforcement of labor standards is as important as other requirements of the contract specifications and that failure to comply with the provisions of the labor standards must be corrected by the contractors and subcontractors. Failure to comply may result in the imposition of serious sanctions and penalties.

Subrecipients are required to conduct compliance reviews to ensure compliance with labor standards. The reviews must include:

- Verifying that required notices are appropriately posted
- Reviewing all contractors' and subcontractors' Certified Payroll Reports to verify that the correct wages are being paid, and they are signed by the authorized person
- Conducting hourly wage and rate determination including overtime payments
- Verifying wages through worker interviews
- Reviewing the use of apprentices, trainees, and helpers
- 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
- Maintaining documentation of compliance reviews and inspections in the project files

6.2.7.1 Required Notices

The subrecipient should be checking that the project Wage Determination and the Davis-Bacon Poster provided by OHCS are displayed at the job site in an area easily accessible to all employees. The DOL poster is available in English and Spanish. The poster is available through the Office of Labor Relations website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf> under Resources, Labor Relations Forms.

6.2.7.2 Certified Payroll Submission

Each contractor or subcontractor engaged in work covered by the labor standards must submit to the recipient a weekly CPR 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 website 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 use of electronic forms is highly recommended for ease of transmission, review, and retention.

DOL revised regulations concerning the information reported on payrolls for Davis-Bacon covered projects often includes personally identifiable information. Payroll reports should not include employee addresses and full Social Security numbers. 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.

6.2.7.2.1 No Work Performed Report

For week(s) in which no work is performed, 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 writing “no work” on the weekly payroll report.

6.2.7.2.2 Certified Payroll Reviews

The subrecipient 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.
- Reported on prime contractors' CPRs all "self-employed owner/operator" subcontractors, with no employees.
- 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 number 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 CPRs contain only permissible deductions such as: Social Security (SSI), federal tax, state tax, bona fide pre-payment of wages, court-ordered payments, safety requirements, 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 employee's 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 a reason to question whether the contractor is 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 an Oregon BOLI, Federal Bureau of Apprenticeship program, or union program. The documentation must list the employee’s 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.

6.2.7.2.3 Hourly Rate and Wage Determination

Payrolls must be checked against the applicable wage decision(s), engineer’s inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and “time and a half” rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions.

6.2.7.2.4 Project Wage Rate Sheet

The Project Wage Rate Sheet 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/>

6.2.7.2.5 Fringe Benefits and Zone Pay

The Davis Bacon prevailing wage is made up of three components: Davis Bacon 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 requirement, 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.

6.2.7.2.6 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 (FLSA) requires weekly overtime pay for contracts under the \$100,000 threshold.

6.2.7.2.7 State Overtime Requirements

State of Oregon law for overtime pay is different from 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 more than 8 hours per day, when working on a 5/8s schedule or in excess of 10 hours per day when working a 4/10s schedule or for hours worked over 40 hours in any 1 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: Oregon's overtime laws do not apply if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

6.2.7.2.8 Compliance with Overtime Laws

The Oregon Business Development Department is not responsible for monitoring and enforcing the state overtime laws.

However, recipients who 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.

Questions 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.aspx>

6.2.7.2.9 Investigating Overtime Violations

When a subrecipient 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 the 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 a 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 OHCS.
- Amounts more than \$10 per worker require copies of corrected/amended CPRs, with the employee's signature and date.
- If over \$10, the violation must be reported in writing to OHCS. Anytime the violation is \$10 to \$999.99, the recipient should use this form (<https://www.oregon.gov/boli/workers/Pages/wageclaim.aspx>) to make the report to OHCS.

- 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 OHCS.

6.2.8 Conduct Payroll Verification Interviews

During construction, the subrecipient must conduct interviews of workers to determine payroll accuracy and compliance with Davis-Bacon. Employee interviews must be conducted by the subrecipient 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.

Interviews should be recorded on the Employee Interview form found here:

<https://www.hudexchange.info/resource/2487/hud-form-11-record-of-employee-interview/>

6.2.8.1 Minimum Interview Requirements

Employees of the following contractors must be interviewed:

1. All prime contractors
2. Subcontractors whose contract award is \$100,000 or more
3. Any subcontractor where there are a large number of payroll problems

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

Example: A job has three prime contractors and at least four subcontractors. Three of the four subcontracts are for less than \$100,000. The possibility exists that a fence contractor may become a fifth sub as the project nears completion. The fence subcontract will be less than \$100,000. Employees of all three prime contractors must be interviewed. Employees of the subcontractor whose contract is \$100,000 or greater must be interviewed. If all four of these contractors are not present on the day an interview is scheduled, an additional trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors present on the jobsite on any day on which interviews are done for the four required contractors must be interviewed.

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

problems. If awarded a subcontract for less than \$100,000, the future fence subcontractor will not have to be interviewed — unless there are payroll problems.

6.2.8.2 Place of Interview

The following guidelines should be followed when deciding on the place to conduct the interview:

- Care must be taken to arrange the session at a time convenient to the employer and employees.
- Workers currently employed may be interviewed during working hours on the job if it can be properly and privately conducted on the premises.
- Interviews may also be conducted at other public places.
- Employees and former employees may also be interviewed by mail.
- An interview request by mail should include a cover letter explaining the purpose of the employee interview and ask the employee to complete items 3 through 12 on the Record of Employee Interview form.
- The remaining items on the Record of Employee Interview form should be completed by the subrecipient with items 1 and 2 to be completed before initial mailing and items 13 through 17 completed after the employee returns the document by mail.
- In off-site interviews or interviews by mail, the number of interviews required must be like the estimated amount that would have been obtained during an on-site session.

6.2.8.3 Initiating the Person-to-Person Interview

The interviewer must confirm their identity to the worker. The interviewer must explain that the project is being constructed with federal assistance, which requires that workers be properly paid, and that the interview's purpose is to determine if the required wages are being paid. If a worker does not want to give information, the interviewer should not insist.

6.2.8.4 Worker Complaint Form

Employees of federally funded projects subject to the requirements of the federal labor standards provisions may file a complaint using the “Federal Labor Standards Complaint Form HUD form 4731” form located at <https://www.hud.gov/sites/dfiles/OCHCO/documents/4731.pdf>

Worker complaints must be kept confidential and be given priority as required by 29 CFR (Code of Federal Regulations) Part 5.6(3).

6.2.8.5 Using the Interview Information

After completing the interviews, the information obtained should be compared to the wage decision and payrolls to determine if the workers are classified and being compensated correctly. If necessary, corrective action should be initiated.

6.2.8.6 Corrections

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

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

6.2.8.7 Handwritten Corrections

The subrecipient, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. The reason is that such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources often do not allow the reader certainty as to who made the corrections. If the subrecipient wishes to provide written clarification of a minor payroll item, a note with the reviewer's name and date may be attached.

6.2.9 Maintain Compliance Records

To show compliance with Davis Bacon regulations, the subrecipient must maintain a file with the following documentation for each construction contract, if applicable:

- Appointment of Labor Compliance Officer
- Copy of Wage Rate Decision(s)
- Ten-Day Confirmation Form(s)
- Additional Classification request(s)
- Eligibility Verification printouts from CCB (for each prime contractor and/or subcontractor)
- Eligibility Verification printouts from SAM (for each prime contractor and/or subcontractor)
- Pre-construction conference report minutes and sign-in sheet(s)

- Labor Standards Record (LSR)
- Supplemental LSR, if any
- Financial Interest Report
- Section 3 Contractor Reports for contracts over \$100,000
- Payrolls, with evidence of compliance review
- Employee interviews
- Compliance with Section 3, Fair Housing construction, Equal Employment Opportunity, and Historically Underutilized Businesses) mandates
- Interim inspection reports
- Wage violations (amount of restitution, number of hours and days)
- Liquidated damages fees and documentation (if any)
- Certificate(s) of Construction Completion
- Final Wage Compliance Report(s)

6.3 Prime Contractor Responsibilities

The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the grantee and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions. If the required provisions are not included in the subcontract, the prime contractor remains responsible for underpayments and liquidated damages of subcontractors.

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

6.3.1 Weekly Payroll Submission Requirements and Payroll Numbering

It is the weekly responsibility of each contractor, subcontractor, and any lower tier subcontractor to submit to the subrecipient numbered weekly payrolls from the time work begins on the project until the work is completed. Contractors must use the payroll form, DOL publication WH-347 found here (<https://www.hudexchange.info/resource/2664/wh-347-payroll/>). The signature page of WH 347, where a contractor certifies wages and fringes, if any, is commonly called the Statement of Compliance, although the document is no longer officially designated with the title of "Statement of Compliance." The Statement of

Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use their own payroll form or other computer-generated form if all required items of the form are included, but the wording of the Statement of Compliance must be verbatim.

For week(s) in which no work is performed, 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 writing “no work” on the weekly payroll report.

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

6.3.2 Addresses and Social Security Numbers

The first and last name of each worker and last four digits of each worker’s Social Security number are to be listed on each payroll. This procedure will, in nearly all cases, allow unique identification of each worker. In the interest of protecting the worker’s privacy, the address and full social security number are not a required element of payrolls. However, the office or place of record keeping of each contractor must retain the full name, address, and social security number of each worker to provide to an authorized person requesting the information. Worker address information will be required to comply with Section 3 reporting.

6.3.3 Signature on the Statement of Compliance:

The Statement of Compliance, which is now the certification portion of payroll form WH347, must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit a written authorization signed by an officer of the company.

6.3.4 Prompt Submission of Payrolls

The subrecipient should require that all payrolls from the prime contractor and any lower tier subcontractor be submitted by the prime contractor within 7 working days after the payroll ending date. Payrolls must be examined promptly by the subrecipient so that any problems discovered can be corrected early while contractors are still on the job. Particular

attention should be given to payroll review during initial stages of construction to ensure that the prime contractors understand and are fulfilling their responsibilities concerning payrolls. If acceptable payrolls are not submitted promptly, the subrecipient may withhold contractor payment until acceptable payrolls are submitted.

6.3.5 Subcontractor Communication

The subrecipient's contractual relationship is with the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, there is not a direct relationship between the subrecipient and subcontractor. As such, the subrecipient should only communicate with the prime construction contractor.

6.3.6 Concurrent Jobs

The payrolls must show only the regular and overtime hours worked on the CDBG-DR project. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours should not be reported on the payroll. However, the gross pay from all job sites must be shown on the payroll.

6.3.7 Wage Rates and Proper Classification

Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and "time and a half" rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions.

6.3.8 Employees Performing Work in More Than One Classification

A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called "split" payrolls, may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

An alternate measure, useful in avoiding the extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in each workday.

Example: Joe, a backhoe operator, gets off his backhoe to try to find a buried water line. He uses a shovel most of the morning — which is the work of a laborer — and finally finds the water line. Later, Joe mounts the backhoe and digs a trench for a sewer line, carefully avoiding the water line previously located. The employer may list Joe as a backhoe operator if Joe is paid the backhoe rate, which is the higher of the two possible rates.

6.3.9 Working Foreman Requirements

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

6.3.10 Classifications

Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if Davis-Bacon requirements were met. Example: “Operator” is a generic classification; however, “backhoe” is on the wage decision and would be a proper classification.

6.4 Summary of Applicable Laws

6.4.1 Federal Fair Labor Standards Act

The FLSA (29 U.S.C. §201 et seq.) establishes standards for employment and employee pay by business organizations. The FLSA is relevant to the construction industry.

A business in the construction industry must have two or more employees and have an annual gross sales volume of \$500,000 or more to be subject to the FLSA. Individual coverage applies to employees whose work regularly involves them in commerce between the states (“interstate commerce”). Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities

of commerce is individually subject to the protection of the FLSA and the current minimum wage and overtime pay requirements, regardless of the sales volume of the employer.

If an employer performs work on a federally financed project or a project in which the federal government has provided assistance in financing the project, a different and somewhat stricter set of labor standards applies. Typically, this would require that employees performing on such contracts be paid a “prevailing wage rate.”

6.4.2 Section 110 of the HCDA of 1974

Section 110 of the Housing and Community Development Act (HCDA) of 1974, as amended and as implemented in 24 CFR §570.603 extends coverage of DBRA to construction programs and projects financed by CDBG-DR funds, including new construction.

6.4.3 Davis-Bacon

Davis-Bacon applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon also applies to residential construction that consists of projects involving the construction, alteration, or repair of eight or more separate, contiguous single-family houses operated by a single entity as a single project or eight or more units in a single structure. Davis-Bacon does not apply to the rehabilitation or reconstruction of residential structures containing less than eight units or force account labor (construction carried out by employees of the grantee or subrecipient).

All laborers and mechanics employed by the contractors and subcontractors in the performance of construction work financed in whole or in part with CDBG-DR or CDBG-MIT 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 or by the Oregon’s prevailing wage rates as determined by BOLI (whichever is higher).

HUD has published guidance on the applicability of Labor Standards to CDBG-funded activities. The guidance can be found here:

<https://www.hud.gov/sites/documents/CDBGCHAPTER16.PDF>

The principal requirements of Davis-Bacon 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.dol.gov/> and <https://www.oregon.gov/boli/employers/pages/prevailing-wage.aspx>
- 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 or the Oregon BOLI. The appropriate determination must be made at the time of procurement.
- Contractors must pay wages at least once a week.

Exceptions to the requirements:

1. Construction contracts at or below \$2,000. Note that arbitrarily separating a project into individual contracts below \$2,000 to circumvent the Davis-Bacon and Copeland Act requirements is not permitted.
2. Rehabilitation or construction of residential structures containing less than eight units.
3. Simple water and sewer line extensions without pumps, tanks, etc. may also be exempt, but water and sewer line construction will typically be categorized as heavy construction.
4. Separate and distinct projects. Contact OHCS for guidance.
5. Contracts solely for demolition, when no federally funded construction is anticipated on the site.

When in doubt regarding the applicability of DBRA, consult ReOregon Program Staff.

Davis-Bacon Act (40 U.S.C. §3141, et seq., 276a to 276 a-7 as implemented in 29 CFR Part 5) provides that 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 (in this case the CDBG-DR and CDBG-MIT programs) shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

Construction contracts for public buildings, public works, and infrastructure more than \$2,000 awarded by subrecipients under Oregon's CDBG-DR program shall include a

provision for compliance with Davis-Bacon and associated DOL regulations. The principal requirements are:

1. The subrecipient must include a copy of the current prevailing wage rate decision in each invitation for bids, request for proposal and purchase order when applicable.
2. The subrecipient may only award contracts to eligible contractors and subcontractors who have accepted the wage rate decision and have signed a certification to pay wages on that basis, and who will comply with other labor standards.
3. Contractors must pay laborers the wage rate determined by DOL or Oregon BOLI to be the prevailing rate in that labor market.
4. Contractors must submit weekly payrolls.

Three special classes of employees may be utilized on projects subject to Davis-Bacon Wage Rates and be compensated at less than the Davis-Bacon prevailing wages.

These classes are:

1. Apprentices — Provided they are individually registered in a bona fide apprenticeship program in which the contractor participates, and which is approved by the DOL. Apprentices must also satisfy other conditions as specified in the Labor Standards Contract Provisions.
2. Trainees — Provided they are in a DOL-approved training program, and they satisfy other conditions as specified in the Labor Standards Contract Provisions.
3. Volunteers — The use of volunteers on a CDBG-DR project must meet the criteria found in 24 CFR (Code of Federal Regulations) Part 70.

When any of these employee classes appear on the contractor's weekly payrolls, it is the contractor's responsibility to provide the documentation necessary to permit the subrecipient to determine that there is compliance with the Davis-Bacon wage rate determination.

State requirements regarding the use of apprentices and trainees, licensing, procurement requirements, and wage standards must be researched and complied with, including local code and regulations.

6.4.4 Copeland Anti-Kickback Act

The Copeland Anti-Kickback Act (18 U.S.C. §874 as implemented in 29 CFR Part 3) makes it a criminal offense for any person to induce, by any manner whatsoever, any person

employed in the construction, reconstruction, 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 the person is entitled under the person's contract of employment. The Act also provides for the submission of weekly CPRs by all contractors and subcontractors.

All contracts for construction, reconstruction, or repair (over \$2,000) must include the following prohibition:

“No contractor or subcontractor shall induce, by any means, any person employed in such publicly funded construction, reconstruction, or repair to give up any part of the compensation to which the person is otherwise entitled except for authorized payroll deductions.”

Subrecipients should conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor must maintain payroll records and submit weekly certified payrolls documenting compliance.

6.4.5 Contract Work Hours and Safety Standards Act

The CWHSSA Act (40 U.S.C. §327 et seq.) and FLSA provide that no contract work, which may require or permit any laborer or mechanic, in any workweek in which he 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 pay for all hours worked in such workweek, whichever is greater. In the event of violations, the contractor or subcontract shall be liable to any affected employee for unpaid wages as well as to the United States for liquidated damages.

All construction contracts more than \$2,000 and other contracts in excess of \$2,500 involving the employment of mechanics or laborers must comply with the following provisions of this law:

1. Contractors shall compute the wages of each laborer and mechanic based on a standard workweek of 40 hours.
2. Work more than this standard is permitted if compensation for the amount in excess of the standard is calculated at a rate not less than one and one-half the basic rate of pay.
3. Contractors may not require any laborer or mechanic to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his/her health or safety as determined under construction safety or health standards promulgated by DOL.

6.4.6 State Law and Local Law and Regulations

6.4.6.1 Use of Oregon Prevailing Wage

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

Both Davis-Bacon rates¹ and the Oregon PWR must be included in the construction contracts funded, in whole or in part, with CDBG-DR funds.

Additionally, the subrecipient must see that the posters "Your Rights Under the Fair Labor Standards Act," "Notice to All Employees," and "Equal Opportunity is the Law" are posted at the job site. Posters are available to be downloaded from the internet at <https://www.dol.gov/general/topics/posters>

DBRA Final Rule (Effective October 23, 2023)

On August 23, 2023, DOL published the final rule, "[Updating the Davis-Bacon and Related Acts Regulations.](#)" Below is a brief summary of the updates in the final rule. Many of the amendments are regulatory changes that codify DOL's current practices and interpretations of existing regulations; as a result, such changes do not, in practical terms, impose new obligations on contractors or contracting agencies. The following link provides a comparison of the "old" versus "new" rule for reference purposes:

<https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts>

Please note the following updates included in the regulations are applicable to contracts entered into after October 23, 2023.

¹ Making Davis-Bacon Work (2006): https://www.hud.gov/sites/documents/21811_4812-LR.PDF

6.4.7 Updating Wage Rates After Award

Section III.B.1.vi(B) of the final rule clarified circumstances in which a project would be required to adopt Davis Bacon wage rates updated after a contract had been awarded. Typically, wage rates apply for the duration of construction; however, the final rule identified three scenarios in which this is not the case:

1. A **new out-of-scope construction**, which refers to instances in which a contract is modified to include “additional, substantial construction, alteration, and/or repair work not within the scope of work of the original contract.”
2. **Additional time period not originally obligated** (i.e., when a contract is changed to “require the contractor to perform work for an additional period not originally obligated, including where an agency exercises an option provision to unilaterally extend the term of a contract.”). The new section instructs subrecipients to review contract change orders to determine if they fall into either category. If so, subrecipients must include the current wage decision in the change order and contractors must comply with the current wage rates.
3. Long-term, as-needed contracts, including blanket purchase agreements (BPAs) and indefinite delivery indefinite quantity (IDIQs), DBRA wage rates apply to BPAs and IDIQs, and wage rates for contracts procured through BPAs and IDIQs must be updated annually. Task orders issued under these types of contracts must incorporate the most recent wage determination modification in the master contract at the time the task order is awarded.

6.4.8 Frequently Conformed Rates

Section III.B.1.xii of the final rule introduced the category of Frequently Conformed Rates to Davis Bacon wage determinations. Previously, DOL was constrained in its ability to issue wage rates by strict thresholds of data availability. If there weren’t enough data available in an area for a particular classification, DOL could not issue a wage rate for that classification in its general wage decision. This led to frequent Requests for Additional Wage Determination for certain wage classifications in those areas. The final rule gave DOL the ability to issue wage determinations for these frequently requested classifications with less data. From a compliance standpoint, Frequently Conformed Rates will be treated the same as “normal” rates in a wage decision, and contractors will be required to comply with them.

6.4.9 Fringe Benefits

Section III.B.3.xii of the final rule revised several provisions related to fringe benefits and Davis Bacon Credits, including the annualization of contributions to certain fringe benefit plans for workers engaged in both DBRA and non-DBRA work, criteria for categorizing non-funded benefit plans, and requirements for crediting the cost of apprenticeship programs against fringe benefit obligations.

6.4.10 Omission of Required Clauses and Wage Determinations and “Operation of Law”

Section III.B.3.iii(F) of the final rule added language to 29 CFR 5.5 to “make effective by operation a contract clause or wage determination that was wrongly omitted from the contract.” This rule should be considered with the language added to local DBRA policy to not supersede HUD or DOL regulations, and where the two contradict, the regulations will prevail.

6.4.11 Withholding

Section III.B.3.xxiii of the final rule clarified DOL’s withholding remedy for underpayments. Under the final rule, cross-withholding is allowed on any contract held by the same prime contractor, even if the contract was awarded or assisted by a different agency than the agency that awarded or assisted the contract on which violations necessitating the withholding occurred. The final rule also established the ability to cross-withhold from entities other than the entity that directly entered the contract with the contracting agency. Under the final rule, when a prime contractor uses a single-purpose entity, joint venture, or other similar vehicle to secure DBRA-covered contracts, DOL may pursue cross-withholding on any other contract held by one of the related entities. Lastly, the final rule added a provision explaining that withholding for workers’ back wages takes priority over various other competing claims.

6.4.12 Anti-Retaliation

Section III.B.3.xix of the final rule added new anti-retaliation provisions to 29 CFR Part 5 in the form of 29 CFR 5.5(a)(11) and (b)(5) and 5.18. These provisions prohibit retaliation against workers or job applicants for engaging in protected activities such as making a complaint or cooperating in a DOL Wage and Hour Division investigation under the DBRA, including the CWHSSA, and add remedies to make whole workers and job applicants who

have been discriminated against in any manner for engaging in, or being perceived to have engaged in, certain protected activities.

6.4.13 Trainees

Section III.B.3.ii(E) of the final rule removed references to trainees from 29 CFR 5.2(n).

6.4.14 Demolition

Section III.B.3.ii(C) of the final rule clarified the circumstances under which demolition work is exempt from DBRA wage requirements. Under the final rule, demolition is only exempt from DBRA when the demolition work does not constitute construction or repair and when no future construction or repair is planned or contemplated. Demolition is always subject to DBRA when performed under the same contract as construction or when future construction is anticipated on the same site.

6.4.15 Recordkeeping

OHCS policy requires record retention of 6 years after closeout. Section III.B.3.iii(B)(1) of the final rule clarified the list of project records that must be retained for 6 years after closeout of the entire grant. Subrecipients will be held to the 6-year retention period.

6.4.16 Payroll Signatures

Section III.B.3.iii(B)(2) codified DOL's longstanding policy that certified payrolls may be submitted electronically, "provided that the electronic submission system requires a legally valid electronic signature...and the contracting agency or prime contractor permits other methods of payroll submission in situations where the contractor is unable or limited in its ability to use or access the electronic system." The final rule further clarified that, "to be valid, the contractor's signature on the certified payroll must either be an original handwritten signature or a legally valid electronic signature. Both methods are sufficient for compliance with the Copeland Act."

6.4.17 Updated Contract Provisions

Due to the changes made by the final rule, HUD has updated form [HUD 4010](#) to be reflected in contracts effective October 23, 2023.

6.5 Helper, Apprentices, Trainees, and Prisoners

6.5.1 Helpers

Helpers, workers who use tools in assisting mechanics and who are also paid below the minimum rates for mechanics, are generally not acceptable as a job classification. 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 DOL.

6.5.2 Apprentices

Apprentices will be permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprentice program registered with DOL, Bureau of Apprenticeship and Training. If a worker is an apprentice, the contractor must submit a copy of the person’s apprenticeship papers with the first payroll on which that worker appears.

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

The wage rate paid to apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeyman's rate contained in the applicable wage decision.

6.5.3 Trainees

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 that has received prior approval, evidenced by formal certification by the federal Bureau of Apprenticeship and Training or the Apprenticeship and Training Division of Oregon BOLI.

Trainees must be paid at not less than the rate specified in the approved program for their level of progress or a percentage of the associated mechanics rate as listed on the wage decision.

6.5.4 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.

6.6 Terminology and Associated Davis-Bacon Requirements

Cleaning — Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.

Contractor's Guide to Davis-Bacon — The HUD guidebook, "A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Projects," is a recommended (but not a required) publication which the subrecipient may wish to distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for grant recipients, construction contractors, and those who prepare contractor payrolls. It gives a brief explanation of issues associated with labor standards and Davis-Bacon. The guide may be downloaded from HUD's website at www.hud.gov. Once at the HUD website, type in "Contractor's Guide to Davis-Bacon" in the search box. The search results should include the desired publication.

Debarment — An Action taken by a debarring official under 9.406 to exclude a contractor from federal contracting and federal-approved subcontracting for a reasonable, specified period; a contractor that is excluded is "debarred."

Demolition — Standalone demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed to allow construction of a new building, the demolition would require prevailing wages. If subsequent construction work is subject to Davis-Bacon requirements, then the demolition would likewise be covered by Davis-Bacon requirements. Refer to Labor Relations Letter LR 2009-01 dated August 12, 2009, for further information at <https://www.hud.gov/sites/dfiles/OCHCO/documents/LR-2009-01.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 rare instances, for 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 installation.

Family Members (as it relates to contractor payrolls) — There are no exceptions to labor requirements on the basis of family relationships. Relatives who are performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.

Force Account — Work conducted by the grant recipient's employees is generally exempt from the federal prevailing wage requirements. Please contact the Department's CDBG regional project manager for assistance if force account work is anticipated for pre-approval from OHCS and HUD if necessary.

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

Items to be Posted at the Job Site — The applicable wage decision(s) for the project or the Project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily accessible to all employees for the duration of construction. The Project Wage Rate Sheet, if used, should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as Exhibit 7-1.

Laborers and Mechanics — Those workers whose duties are manual or physical as distinguished from managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, whereas laborers perform tasks such as cleaning and shoveling that are not normally thought of as a recognized trade. On a wage decision, a classification that is not "laborer" is automatically considered as a "mechanic" classification.

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 subcontractors, especially owner/operator contracts. To determine compliance, divide the total hours worked by the contract price to determine the hourly rate of pay.

Precutting and Prefabrication — Precutting or prefabrication of parts to be used in the construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.

Prevailing Wages — Total minimum compensation, including both the base rate and fringe benefit amount, as required under Davis-Bacon for a given classification of worker as determined by DOL in a document called a wage decision. See Subsection 4.2 for further discussion on wage decisions.

Site of Work — The site of work is limited to the physical place or places where construction occurs and to adjacent or nearby property used by the contractor or subcontractor that can reasonably be included because of proximity. This area is where the Davis-Bacon wage rates apply.

Supply and Installation— The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. For construction work involving installation of equipment, if the cost of installation is 13% or less of the total cost of the CDBG-DR financed equipment, this is an incidental cost, and the installation is not subject to Davis Bacon wage rates (HUD Office of Labor Relations notice dated November 15, 1988).

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 7-day period. Overtime pay must be paid for hours worked more than 40 hours per week.
- The Oregon BOLI workweek is a 5-day period unless the schedule of work is for 10- hour days. For a 5-day workweek, overtime must be paid for all hours worked more than 8 hours per day. For a 4-day workweek, overtime must be paid for all hours worked more than 10 hours per day. Regardless if 40 hours have not been worked in the week, the state requires overtime to be paid for all work on Saturday, Sunday, and six legal holidays.

6.7 Useful Resources

- Federal Fair Labor Standards Act; [29 USC Chapter 8](#)
- Davis-Bacon and Related Acts; [40 USC Chapter 31, Subchapter IV](#)
- Copeland Anti-Kickback Act; [18 USC §874](#), [40 USC §3145](#)
- CWHSSA; [Field Operations Handbook, Chapter 15](#)
- State of Oregon Labor Standards and local laws and regulations

- Labor Standards requirements:
https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441
- Federal Prevailing Wage determination: [Wage Determinations page at Sam.gov](#)
- Oregon Prevailing Wage determination:
<https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>
- Oregon Construction Contractors Board:
<http://www.oregon.gov/ccb/Pages/index.aspx>
- Oregon Debarred Contractors Listing:
http://www.oregon.gov/BOLI/WHD/PWR/docs/Debar_List.pdf
- Responsible Bidders Form:
https://ccbed.ccb.state.or.us/ccb_frames/responsiblebidders/
- Public Works Bond: <https://www.oregon.gov/boli/employers/pages/prevailing-wage.aspx>
- OMWESB Public Bond exemption:
https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/PWB_Application_Exemption.pdf
- Certified Payroll Form (WH-347): <https://www.hudexchange.info/resource/2664/wh-347-payroll/>
- Project Wage Rate Sheet: <https://www.hudexchange.info/resource/2496/hud-form-4720-project-wage-rate-sheet/>
- For questions regarding Oregon State Labor Law:
<http://www.oregon.gov/BOLI/pages/index.aspx>
- Employee Interview Form: <https://www.hudexchange.info/resource/2487/hud-form-11-record-of-employee-interview/>
- Worker Complaint Form:
<https://www.hud.gov/sites/dfiles/OCHCO/documents/4731.pdf>
- HUD Guidance regarding Davis Bacon for CDBG projects:
<https://www.hud.gov/sites/documents/CDBGCHAPTER16.PDF>
- Required Job Site Posters: <https://www.dol.gov/general/topics/posters>
- Comparison chart for recent changes in Labor Standards:
<https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts>
- Updated DBRA: [Updating the Davis-Bacon and Related Acts Regulations](#)
- Form for reporting violations of Overtime Payment:
<https://www.oregon.gov/boli/workers/Pages/wageclaim.aspx>

- Updated Labor Standards Provisions to be included in all construction contracts:
<https://www.hud.gov/sites/dfiles/OCHCO/documents/4010.pdf>

6.8 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 to HUD MUST be interpreted as submitting the form to OHCS, not HUD.

1. OHCS 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 BOLI rates) in all bid and contract documents.
3. Verify wage rates through Sam.gov 10 days prior to bid opening; notify plan holders of any modifications.
4. Prior to awarding the construction contract:
 - i. Verify with OHCS the general contractor eligibility (registration with the CCB and not on the Excluded Parties List).
 - ii. Verify with Oregon 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 OHCS representative 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 OHCS at least 10 days 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 OHCS 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 OHCS prior to requesting grant funds for construction.
 12. Post at the job site:
 - i. Federally Required Wage and hour poster, Lock-in Davis Bacon wage determination along with the DOL-approved additional classification(s)
 - ii. Applicable Oregon BOLI's wage rate
 - iii. Project sign (if required)
- Copies of these posters are available at:
<https://www.oregon.gov/boli/employers/Pages/required-worksite-postings.aspx>
13. Contractor/Subcontractor Agreement and Fringe Benefit Summary forms received by the subrecipient prior to release of grant funds to prime contractor for work performed by the subcontractors.
 14. Information collected about “unfunded” fringe benefit plans prior to contractors showing fringe benefit payments on payroll reports.
 15. Weekly certified payroll reports (on approved forms) submitted as required and reviewed for correct wages (including overtime pay).
 16. Apprenticeship documentation submitted with first payroll on which apprentice is shown.
 17. Employee interviews are conducted at least once per month during construction and with no less than one employee for every trade at the site. Information compared on interview forms must agree with the corresponding payroll report.
 18. Payroll violations and employee complaints investigated and resolved.

6.9 Additional Resources

- HUD — Contractors Training materials:
<http://portal.hud.gov/hudportal/HUD?src=/states/shared/working/r10/olr/trainingcontractors>