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**Upcoming Events**

**Agency Training**— The **OLR Web site** now includes all training scheduled for agencies and other clients. In Region IV, we do send out invitations, mass emails and faxes to notify potential participants, but please check the site frequently, as there may be training available in a nearby state. The URL is: <http://www.hud.gov/offices/olr/olrtrainingsem1.cfm>

**Upcoming Training**

- July 8: Contractors (Biloxi, MS).
- July 8: All agencies & contractors (Gulfport, MS)
- August 24: PHAs (Atlanta, GA)
- August 28: CDBG (Atlanta, GA)

*The future's a comin'  
 and there's no  
 place to hide!*

**Inside this issue:**

ARRA, NSP2 Davis-Bacon Applicability 1,2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**NEWS ALERT!**

**Region IV Labor Relations News**

**USING RECOVERY FUNDS?**

**Are you prepared for how Davis-Bacon applies?**

**Provisions of the American Recovery and Reinvestment Act of 2009 (ARRA)**, change how Davis-Bacon prevailing wage requirements apply to construction and rehabilitation work funded by that program. Although prevailing wage requirements – whether Davis-Bacon or HUD-determined—already apply to virtually all construction & repair work undertaken on public housing units under an Annual Contributions Contract (ACC), you should know how ARRA might impact your housing authority if it receives funds from one or more ARRA programs.

**HUD components of the recovery program** include the Public Housing Capital Fund, Assisted Housing Green retrofit, the Lead Hazard Reduction/Healthy Homes Program, Neighborhood Stabilization Program (NSP-1 & NSP-2), Tax Credit Assistance Program, and the Community Development Block Grant Program recovery funds (CDBG-R). Davis-Bacon requirements apply to all, and in a very broad fashion. If you use ARRA funds to assist with construction or rehabilitation work, the activity will be covered by Davis-Bacon, subject to the **\$2,000** threshold for each prime contract.

As we said previously, PHAs are already subject to prevailing wage requirements of one kind or another anyway, but ARRA does present new challenges for determining how or if Davis-Bacon applies for situations where it has not previously done so. We want you to be aware of these new programs and how their provisions may affect your construction and rehabilitation pro-

jects. The following information may at first appear to deal mainly with CDBG entitlement grantees; however, if your agency receives these funds, they could trigger Davis-Bacon requirements in ways not anticipated under the ‘old’ rules.

A key phrase in section 1606 of the ARRA legislation plainly states the Davis-Bacon prevailing wage requirement applies broadly to ARRA-appropriated construction projects:

**Notwithstanding any other provision of law** and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality.

In **All Agency Memorandum 207** (AAM 207) dated May 29, 2009, the U.S. Department of Labor (DOL) clarifies how Davis-Bacon prevailing wage requirements will apply to construction and rehabilitation work assisted with ARRA dollars. According to AAM 207, all traditional thresholds and other limitations are overridden by the labor standards at Section 1606 of the Recovery Act. This means, for **CDBG-R** and **NSP-2** funds, there is no 8-unit threshold; no acquisition, equipment purchase or “soft costs” limitation; and no volunteer exclusion. For the first time, Tax Credit Development (TCAP) will be covered by Davis-Bacon requirements.

Beyond the more broad applicability standards to CDBG-R and NSP-2, tribal wage rates will not supersede Davis-Bacon rates (NAHASDA-R) and Indian CDBG-R will be subject to Davis-Bacon (regular ICDBG is exempt under authority granted to the Secretary in the HCDA).



## Davis-Bacon and ARRA/NSP-funded projects, cont'd

### Contacts

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AAM 207 also included a blanket decision that Davis-Bacon does not have to be applied retroactively to “an on-going construction project (previously not covered by Davis-Bacon) that was awarded, or for which construction had started, prior to notice of ARRA assistance” (page 5 of the AAM).

The HUD Office of Labor Relations has prepared more precise guidance concerning Davis-Bacon projects awarded or underway prior to notice of Recovery Act funding. We have clarified with DOL that “notice” will mean the date funding availability was announced at the application level. For CDBG-R grantees that conduct competitive rounds for CDBG-R funding, the relevant date will be the date the grantee announces and invites applica-

tions for CDBG-R assistance. In the event the grantee undertakes work on its own, the date of notice is the date the formula allocations were made. For NSP-2 grantees, in most cases the “notice date” means the date of the HUD NOFA inviting applications on May 4, 2009. Note that in such cases, the wage decision applicable to the work is the wage decision in effect at construction start or contract award, whichever is first. For contracts awarded pursuant to competitive bidding, it is the wage decision in effect at bid opening, provided the contract is awarded within 90 days after bid opening. See also DOL regulations, 29 CFR Section 1.6(c).

Please note that the new rules applicable under ARRA do not apply to NSP “round one” funds (NSP-1). NSP-1

was funded by the Housing and Economic Recovery Act of 2008, a different piece of legislation, which maintained the same requirements and thresholds already in place for the CDBG program.

You can review all of the HUD recovery programs on the [HUD Website](http://www.hud.gov/recovery/): <http://www.hud.gov/recovery/>.

The AAM is posted on the [DOL Website](#).

**Confused?** Please contact your labor specialist for guidance. You may want to attend one of the labor workshops being planned. In addition to the four classes mentioned on page one, there will be more. Watch for dates and times posted on our Web site.



## Stay tuned for updates...

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### Attention/Forward to:

Agency staff responsible for Davis-Bacon prevailing wage enforcement