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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 send out invitations via mass emails 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)



Inside this issue:

ARRA Davis-Bacon Applicability 1,2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NEWS ALERT!

Region IV Labor Relations News

“EVERYTHING YOU KNOW IS RIGHT!” AGAIN

Our “Everything You Know is Wrong” issue was such a resounding success we thought of a sequel: **Everything You Know is Right! Again!**

By now many of you know the U.S. Congress passed, and the President has signed (on June 24th), legislation that affects how Davis-Bacon applies to certain programs that receive funds under the **American Recovery and Reinvestment Act of 2009** (the Recovery Act). Section 1205 of the **Supplemental Appropriations Act of 2009** clarifies prevailing wage requirements for the CDBG, Public Housing, and Native American Housing programs funded under the Recovery Act.

In case you hadn’t heard, we are pleased to pass along the news. For projects funded or assisted under the Recovery Act **CDBG-R, NSP-2, and Public Housing Capital Funds programs**, Davis-Bacon applicability shall be determined in the same manner as it is under the existing statutes for the CDBG and Capital Funds programs, respectively.

Similarly, for Recovery Act Native American programs, the provisions contained in existing statutes are applicable; Indian CDBG is exempt from Davis-Bacon and tribally-determined prevailing wages may pre-empt Davis-Bacon rates.

To recap, the Supplemental Appropriations Act extends the regular thresholds for CDBG, Public Housing and NAHASDA projects to the Recovery Act. Recovery Act CDBG-R, NSP-2, ICDBG, IHBG and Capital Fund programs will operate under the same Davis-Bacon rules and thresholds as their regular program counterparts.



On the Other Hand....

What about the other components of the recovery program— the **Tax Credit Assistance Program (TCAP), Assisted Housing Green Retrofit, and the Lead Hazard Reduction / Healthy Homes Program?** Does the Supplemental Appropriation Bill of 2009 change how Davis-Bacon applies to them? **No.** It does not affect these new programs. **Davis-Bacon will apply to these three programs as described in our previous newsletter** and in All Agency Memorandum 207 (AAM 207), covered in the previous newsletter.

Recovery Act-Funded Projects & Prospective Application

Also, recall that AAM 207 included a blanket decision that Davis-Bacon shall not apply *retroactively* to projects (previously not covered by Davis-Bacon) that were awarded or under construction prior to notice of Recovery Act funding (page 5 of the AAM). Rather, for these projects Davis-Bacon requirements apply as of the date of approval of Recovery Act assistance. We call this “prospective application.”

Davis-Bacon and Recovery Act, cont'd

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Three Dates

There are three critical dates to bear in mind: (1) the **notice** date – this identifies the projects eligible for prospective application; (2) the date of **approval** of Recovery Act assistance – this is when contractors and subcontractors need to begin complying with Davis-Bacon wage and reporting requirements; and (3) the **lock-in date** for the wage decision – this identifies which wage decision is applicable to the project. Remember, we're only talking about Recovery Act assistance here.

Notice Date - The "notice" date will mean the date funding availability was announced at the *application* level. In most cases, this is the date HUD, or a state or local agency issues a notice of funding availability (NOFA) and invites applications for assistance. For HUD "formula" grantees (e.g., CDBG-R, TCAP) that conduct competitive rounds for Recovery Act assistance, the notice date will be the date the grantee announces

and invites applications for assistance. In the event a formula grantee undertakes work on its own, the date of notice is the date that the formula allocations were made. For HUD grantees that compete for Recovery Act grants (e.g., NSP-2), the "notice date" means the date of HUD's NOFA inviting applications.

Approval Date - The approval date is the date Recovery Act assistance is approved for a particular project (e.g., notice or letter of grant approval, or the loan closing date for some housing finance agencies).

Lock-In Date - The lock-in date is the date construction started or the contract was awarded, whichever was first. For contracts awarded pursuant to competitive bidding, it was the date bids were opened, provided the contract was awarded within 90 days after bid opening. In other words, we go back to pick-up the wage decision that would have applied if the project had been subject to Davis-Bacon

requirements from the start. [See also DOL regulations, 29 CFR Section 1.6(c).]

These rules are to guide determinations for ongoing activities where Recovery Act funds are introduced. Some of the concepts may be new to agency staff, so please contact the HUD Office of Labor Relations on questions of applicability and enforcement.

Finally, please be sure to **document** in your files the rationale for determining applicability and how your agency reached conclusions regarding both applicability and the timing of enforcement actions.

Confused? Do you have questions? Please contact your Labor Relations Specialist (see names/numbers at left).



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Attention/Forward to:

Agency staff responsible for Davis-Bacon prevailing wage enforcement