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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

**“EVERY THING YOU KNOW IS WRONG!” IS IT TRUE?
If you are receiving recovery money (CDBG-R, NSP-2, etc)**

“Everything You Know is Wrong,” according to the title of the 1974 album by the *Firesign Theater*. I feel like listening to those old crazy sketches because that’s how it seems with the **American Recovery and Reinvestment Act of 2009** (ARRA).

Things have changed. Actually, Davis-Bacon has not changed, but how it is applied under the “Related Act” (ARRA) has—and in a big way.

If your agency uses recovery funds for construction or rehabilitation work you need to know just how different things are. Do you think Davis-Bacon does not apply to CDBG-funded rehabilitation of single family dwellings, acquisition, equipment purchase or soft costs? **Think again** and read on.

We start with the familiar threshold. **Davis-Bacon still applies to prime contracts in excess of \$2,000.** At least that has not changed. However, 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—including CDBG-R and Neighborhood Stabilization Program (NSP-2) “round two” dollars. The DOL memo answers questions raised by the wording contained in the 2009 legislation. Thresholds exempting applicability (number of units, single family homes, soft costs, acquisition, equipment purchase, etc.) grantees are familiar with under the CDBG program do not apply to ARRA (CDBG-R, NSP-2, & TCAP) funded projects. The AAM is posted on <http://www.wdol.gov/>.

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). 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



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

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conduct competitive rounds for CDBG-R funding, the relevant date will be the date the grantee announces and invites applications 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).

Now, **what about NSP "round one" funds?** Do these new rules apply to NSP-1? In a word, 'No.' 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.

But wait! There's more!

Other components of the recovery program include the Public Housing Capital Fund, Assisted Housing Green retrofit, and the Lead Hazard Reduction/Healthy Homes Program. Covered? Yes, Davis-Bacon requirements apply to all, and in the same broad fashion as described in AAM 207. **And still more!** If you use CDBG-R or NSP-2 funds to assist public housing authorities with construction/rehab work...that's right.

Covered in the same broad fashion, subject to the **\$2,000** threshold for each prime contract.

Although coverage is broad, some things remain the same. For example, the policy for determining Davis-Bacon applicability to demolition work is unchanged.

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

So, it's back to the classroom to learn a few lessons and separate the several new programs from the ones with which we are now comfortable. **Confused?** 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.

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Attention/Forward to:

Agency staff responsible for Davis-Bacon prevailing wage enforcement