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Region IV

An Intermittent OLR Publication  
Summer 2007

**Upcoming Events**

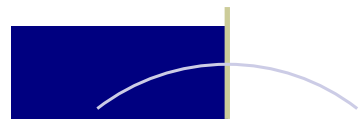
- **Agency Training**— The OLR Web site now includes all training scheduled for agencies and other clients. In Region IV, we do send out invitations, mass Emails and faxes to notify potential participants, but please check the site frequently, as there may be training available in a nearby state. The URL is: <http://www.hud.gov/offices/olr/olrtrainingsem.cfm>
- **Special Training**—If your agency has any urgent need for labor standards training, please contact your HUD Labor Specialist.

**Proverbs**

See much  
Say little  
That way lies wisdom

**Inside this issue:**

In Whole or in Part	1-2
Staff Contacts	2
Change That Bulb!	3
Semi-Annual Report Reminder	3
Employee Interviews	3-4



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Region IV Labor Relations News**



**“I now take thee in whole or in part....”**

**This one’s for recipients of Community Development Block Grants....**

The Housing and Community Development Act of 1974, as amended (HCDA); Section 110 states:

All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed **in whole or in part** with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended...provided, that this section shall apply to the

rehabilitation of residential property only if such property contains not less than 8 units....

**What does that really mean?**

Many CDBG grant recipients use CDBG funds to leverage other funds to finance or assist projects. Sometimes the CDBG funds comprise a relatively small part of the cost of a construction work.

'In whole or in part' means if you introduce the least bit of CDBG funds into a construction or repair project that meets the threshold requirements for the CDBG program, Davis-Bacon applies to the entire project—even if the rest of the project is “privately funded.”

Another question concerns the duration of Davis-Bacon requirements. Once introduced, when and for how long might - prevailing wage requirements apply?

**Example 1:** If you introduce CDBG funds to an on-going contract, then Davis-Bacon wage requirements will apply to all work under the contract (for prime contracts over \$2,000), even if the work began before the introduction of federal funds.

This issue typically arises in cases where a

community wants to make use of an existing contract a municipality has with, say, a paving contractor. The municipality (using only its own funds) has a good price on city-wide paving, and the CDBG program wants to take advantage of the price the city got on the deal. But if the contract with the city calls for "city-wide" paving and the CDBG program just injects CDBG funds into that existing agreement, then Davis-Bacon requirements will apply to all paving work under the existing agreement.

**Example 2:** Another typical situation involves repairs to a structure. Let’s say a community organization anticipates renovations totaling \$200,000, and asks the city to provide CDBG funds of \$50,000 to help defray the costs. To determine how prevailing wage requirements might apply, we look to the scope of work anticipated by the grant

applicant, the scope of the grant agreement between the city and the community organization, along with the timing and contracting arrangements for the work.

**But it Can Get (More) Complicated:** For a simple project, where the \$50,000 is applied to a project involving the total renovation of the structure, the applicability of Davis-Bacon is straightforward. However, work is not always performed under a single prime contract or within a limited time. CDBG funds might be applied to stopgap or emergency work notwithstanding the need or desire to perform more extensive modernization at a later time. Would Davis-Bacon apply to the work performed at a later time or only to the work directly funded by CDBG? It depends. Let’s look at some more examples.

**Continued, next page...**



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**Save four digits; dial us direct!**  
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**Alabama**  
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## “In whole or in

**Example 3:** A facility requires much work, some of which might at first glance appear separable (roof repair vs. parking lot repaving), yet CDBG funds may not be applied narrowly to specific work items when the overall construction work consists of the sum of many parts.

Whether or not the work contemplated by the grant application constitutes the entire “construction work” is relevant to determining the extent to which prevailing wage requirements apply.

Agencies should therefore require grant applicants to submit information sufficient to describe all of the work planned, not just what they plan to do with the CDBG funds.

According to the Department of Labor, a construction project

“consists of all construction activity necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place.”

[Davis-Bacon Construction Wage Determinations Manual of Operations, 1986]

Consider (**example 4**) a case in which a facility requires many repairs and major renovation. The roof requires repair or replacement, faulty wiring must be replaced, plumbing and bathrooms must be upgraded, and numerous code violations exist. It will take at least \$150,000 to complete all of the work necessary to address the code violations and renovate the facility.

Several work items are identified by the CDBG agency as worthy of funding, and the agency agrees

to provide \$15,000. The agency identifies in the grant agreement those work items for which CDBG funds will be used. Similarly, the contract identifies those items, without mentioning other necessary work at the facil-



ity.

At about the same time, a prime contractor is obtained to accomplish all the renovation work except for the work funded by CDBG.

Will prevailing wage requirements apply only to the work funded by CDBG or to all of the renovation work?

Given the facts as described here, Davis-Bacon would apply not only to the CDBG-funded work but to all renovation work. The construction work consists of the renovation of the facility, and all contracts appear to be closely related in purpose, time and place.

Nevertheless, the city should check with HUD to determine if there are separable items. The code violations issue provides a possible solution. Depending on immediate need, hazard, or public safety concerns, perhaps the correction of the code violations could be determined

separate from the overall renovation work.

Let’s take this a step further. Some communities are known to obtain commitments by grant recipients to comply with certain requirements (such as providing affordable housing or providing a service) for periods of ten or fifteen years in exchange for receipt of CDBG funds.

Does this mean a grant recipient also incurs Davis-Bacon obligations for ten or fifteen years? Not according to the definition cited previously. Not if the documentation exists to clearly identify the scope of a project. While it is true that construction work can take a long period of time due to the scope of the work or unforeseen delays, prevailing wage compliance attends to the construction work or project. Once that project is completed, the obligation for Davis-Bacon compliance ends. Going back to our example (#4), if the owner of the facility later decides to build an annex to the renovated building, Davis-Bacon will not apply unless that subsequent work is federally funded or financed.

Still, agencies must be mindful that assisting part of a rehabilitation effort or inserting CDBG funds into ongoing work can affect prevailing wage requirements on the entire effort. It pays to ask the right questions, obtain complete documentation, and maybe even get the written opinion of your friendly HUD Labor Specialist.



## Change a Light, Change the World!

October is Energy Awareness Month. The Energy Star Change a Light, Change the World Campaign is a national call-to-action to encourage every individual in the United States to help save energy and protect the environment through energy-efficient lighting. The ENERGY STAR Change a Light Day is **Wednesday, October 3, 2007**.

The goal of HUD's participation in the Campaign is simple: to encourage as many as possible of our customers and partners in the affordable housing sector – as well as HUD employees – to “take the pledge” at <http://www.energystar.gov/changealight> to **replace at least one incandescent light bulb with an Energy Star Compact Fluorescent light (CFL)**. By taking this simple step, we can raise awareness of what each of us can do to reduce our nation's dependence on foreign oil and increase our energy security. The Campaign's goal this year is to replace 1 million light bulbs. Additional information on Energy Awareness Month can be located at <http://www.energystar.gov/joincal>.



Information on energy issues related to public housing can be located at <http://www.hud.gov/offices/pih/programs/ph/phecc>.

The Campaign is sponsored by the Partnership for Home Energy Efficiency comprised of the Environmental Protection Agency (EPA), the Department of Energy (DOE) and the Department of Housing and Urban Development (HUD). The partnership website is <http://www.energysavers.gov>.

In support of the Department's Energy Initiatives, HUD Offices are planning activities that will highlight the importance of this initiative. Please join us in supporting this important initiative!

## HUD-11 Employee Interviews

The on-site visit and interview constitute the eyes and ears of the labor standards reviewer. **Agencies must give adequate attention to this vital and mandatory function. Failure to do so constitutes a violation of HUD policy as described in HUD Handbook 1344.1 and subsequent published guidance.**



The interview process is crucial in the development of complaints or the completion of investigations concerning wage underpayments, kick-backs, failure to pay overtime, and more.

Moreover, the interviews help validate the accuracy of the payroll data and provide useful insight to potential problems that develop.

Through this process, the agency can “see” the work employees are performing and determine if the payrolls accurately reflect the work performed. The agency can also “see” who is on the work site and determine if the payrolls represent all of the trades and contractors on site.

In 1996, OLR initiated streamlining procedures enabling agencies to spend more time finding and correcting violations and less time on process and paperwork. Employee interviews were and are at the heart of these streamlining procedures.

Streamlining did not do away with interviews. Instead, streamlining measures provide greater flexibility for agencies in determining *how many* interviews/observations to make, *when*, and *of whom*. The guidance published in HUD Handbook 1344.1 states that a “representative







sample” of workers and trades should be interviewed. For many cases this will work fine. However, HUD encourages agencies to also employ “targeting” techniques to identify problem contractors and suspected issues (such as disproportionate numbers of laborers) by interviewing more workers of one trade and not worrying so much about known high performing contractors. In other words, agencies should pursue leads and discover the “interesting stories” that may be present on job sites.

**Continued, page 4**

## HUD Mission

**Increase Homeownership, support community development, and increase access to affordable housing free from discrimination.**

### HUD Goals

-  Increase Homeownership Opportunities
-  Promote Decent Affordable Housing
-  Strengthen Communities
-  Ensure Equal Opportunity in Housing
-  Embrace High Standards of Ethics, Management, and Accountability
-  Promote Participation of Faith-Based and Community Organizations

## Reminder... Semi-Annual Reports Are Due

Please don't forget to prepare and submit your Semi-Annual Labor Standards Enforcement Reports for the reporting period Apr 1-Sept 30, no later than **Monday Oct 8th**.

Contact your OLR Specialist if you have any questions.



# HUD-11 Employee Interviews, continued

**FYI**

**Wage Decision Source**— The official Web site for obtaining Davis-Bacon wage decisions is <http://www.wdol.gov>.

**Agency “LRO”**— Please be sure to designate a staff person or persons to be responsible for the enforcement of prevailing wage requirements (including, for housing authorities, HUD-determined prevailing wage requirements). This is what we call the agency’s “Labor Relations Officer.”

This primary contact is the person you should identify on Semi-Annual Enforcement Reports under “Agency Contact Person.” Generally, the contact person should bear primary responsibility for the management and enforcement of federal labor standards for the agency.

OLR guidance suggests targeting may mean no interviews are conducted of employees of certain *contractors* so more interviews may be conducted where problems are indicated. Targeting does not mean that interviews are dropped altogether as a matter of routine. The absence of interviews should be due to exceptional circumstances and for reasons which are

clearly documented. Consider “targeting” more a matter of emphasis regarding enforcement activity.

Information given by employees is **confidential**. Do not disclose the employee’s identity to the employer unless the employee provides his/her written permission.

Employees are generally in-

terviewed during working hours on the job, provided the interview can be properly and privately conducted on the premises. In cases of possible falsification of records, fear of reprisals, or intimidation, follow up interviews may be conducted elsewhere, such as in the employee's home, at the agency's office, or another suitable place.



There *are* circumstances under which written permission is not a requirement. For example, if an employee is observed working out of classification, the observation and

violation may be disclosed. However, if the *employee* provides the information and is not observed, the disclosure is confidential and must be addressed in a different manner so as to preserve confidentiality. Under no circumstances are HUD-11 interview forms to be given to contractors.

Disclosure of employee statements is governed by the provisions of the Freedom of Information Act and the Privacy Act of 1974.

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## Attention/Forward to:

**Agency staff responsible for Davis-Bacon & HUD determined prevailing wage enforcement**